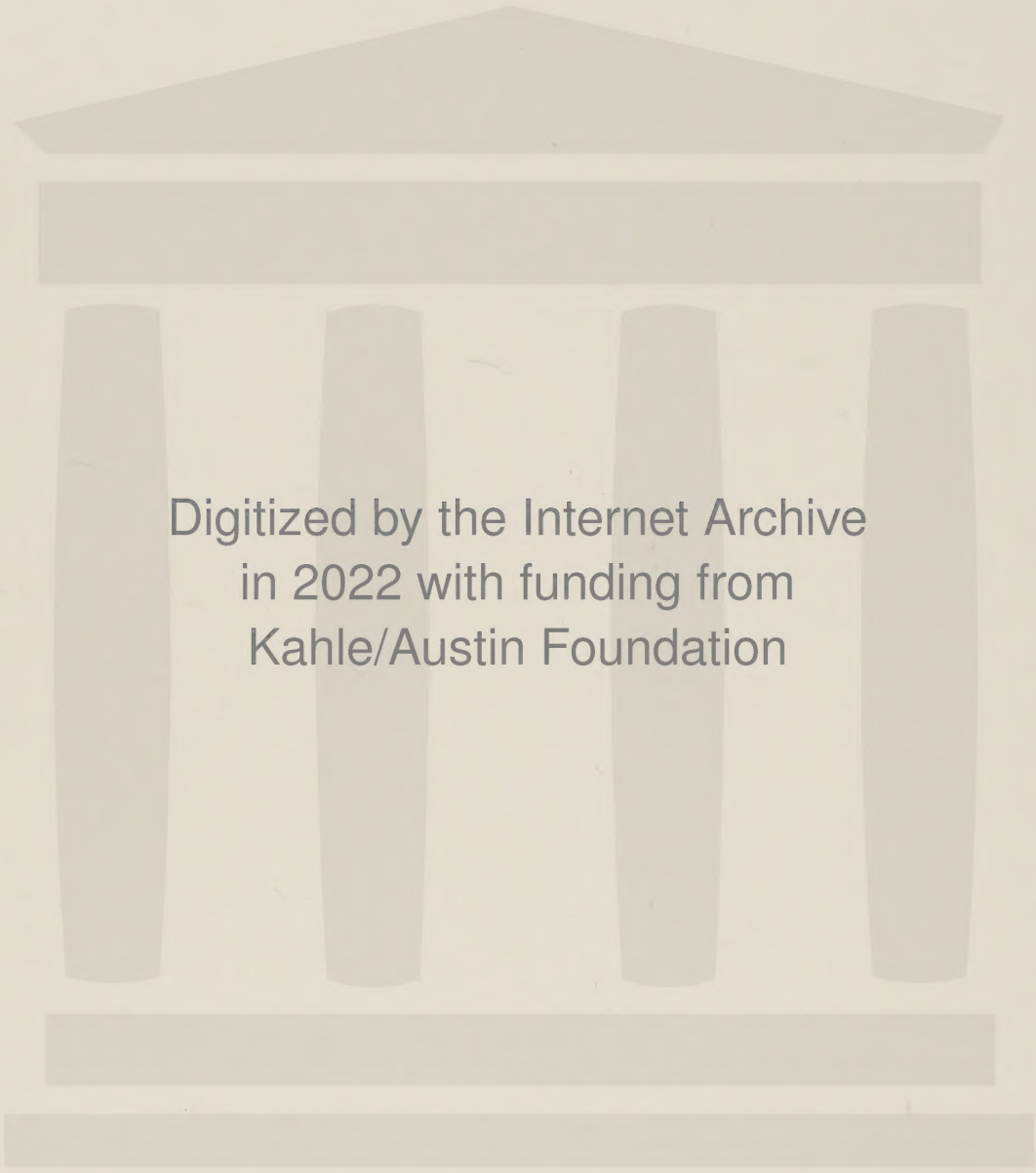
COUNCIL ON TRIBUNALS

MODEL RULES OF PROCEDURE FOR TRIBUNALS

REPORT

m 1434 LONDON: HMSO £13.70 net



COUNCIL ON TRIBUNALS

MODEL RULES OF PROCEDURE FOR TRIBUNALS

REPORT

Presented to Parliament by the Lord High Chancellor
by Command of Her Majesty
March 1991

LONDON: HMSO
£13.70 net

Cm 1434

COUNCIL ON TRIBUNALS
22 Kingsway
London WC2B 6LE

25th January 1991

I have the honour to submit to you the Council's Report on Model Rules of Procedure for Tribunals. This brings to fruition a project first recommended by the Royal Commission on Legal Services in their Report in 1979.

The Council wish me to record, on their behalf, their indebtedness to the draftsman of the project, Mr Paul Fifoot CMG, and to members of their Legal Committee, chaired successively by Miss Sheila Cameron QC and Professor David Foulkes. To them must go the major share of the credit for the project's successful completion.

C. M. Clothier.

Sir Cecil Clothier KCB, QC
Chairman

The Right Honourable The Lord Mackay of Clashfern,
Lord Chancellor,
House of Lords,
London SW1A 0PW

and:

The Right Honourable The Lord Fraser of Carmyllie QC,
Lord Advocate,
Fielden House,
10 Great College Street,
London SW1P 3SL

MODEL RULES OF PROCEDURE FOR TRIBUNALS

GENERAL INTRODUCTION

Purpose of the model rules

1. **This compilation is designed to provide a comprehensive collection of model procedural rules for the use of Departments and tribunals which are engaged in drafting or amending rules for tribunals.** The Council on Tribunals have a statutory responsibility in respect of procedural rules for tribunals.* At present some 60 categories of tribunals are placed under their supervision and 23 under the supervision of their Scottish Committee. These tribunals include not only adjudicative bodies but also administrative authorities with adjudicative functions which are required to exercise these functions in accordance with judicial principles; and together they handle well over a million cases a year. Many, but not all, have procedural rules made under statutory authority. From time to time established tribunals have a need to adopt new rules or replace or amend existing ones, and new tribunals need to adopt procedural rules. The Council have, therefore, produced this compilation of model rules which can be employed for any tribunal (whether or not placed under their supervision) whenever the opportunity presents itself.

2. **It must be emphasised that this compilation is not a code. It is a store from which Departments and tribunals may select and adopt what they need. In making their selection from the various provisions, Departments and tribunals should give careful consideration as to what is necessary or useful for the purpose of the particular tribunal. They should not just adopt a rule because it happens to be included in this compilation, and they should not feel inhibited about modifying or adapting a model rule if the model does not fit the particular needs or circumstances of the tribunal. Inevitably, there is a measure of repetition in the model rules which is a consequence of their being a store from which selections may be made.**

3. The compilation cannot deal with every aspect of a tribunal's jurisdiction. The function and jurisdiction of the existing tribunals is so varied that it is not possible to provide models to deal with all aspects of their respective procedures, let alone to anticipate the future. Certain aspects of a tribunal's jurisdiction, particularly those of a more specialised kind (e.g. Mental Health Review Tribunals, immigration tribunals, the Copyright

* See section 10 of the Tribunals and Inquiries Act 1971.

Tribunal, the Financial Services Tribunal) will always require some individually designed rules. There are, however, common elements which secure the three objectives identified by the Franks Committee (Report of the Committee on Administrative Tribunals and Enquiries: Cmnd 218—the "Franks Report") as essential to the functioning of a tribunal system, namely "openness, fairness and impartiality", and it is model rules giving effect to these objectives which are at the core of this compilation. Additional rules to suit the particular jurisdiction of the tribunal should be fitted in around such core rules as are selected.

4. The model rules contain some new material, but much of the material has been selected from rules about which the Council have been consulted in recent years; others have been proposed from time to time by the Council. This compilation was circulated in draft to a number of Government Departments, tribunals and other interested bodies, and the Council on Tribunals are grateful to those who commented on the draft. They are listed in Annex C. Where appropriate, account has been taken of the comments in this version of the compilation.

General considerations

5. The basic factor governing the scope of procedural rules is the principal legislation ("the enabling Act") and its rule-making power. It is highly desirable when drafting legislation which will establish a new tribunal to give early and detailed consideration to the powers and procedures of the tribunal so as to ensure that the rule-making power is adequate. A power to make rules for 'the practice and procedure' of the tribunal or for 'regulating the exercise of the rights of appeal' is unlikely to suffice for the needs of a modern tribunal. A checklist of matters to be considered in this connection is set out in Annex A to this compilation.

6. In addition to the enabling powers in the Act and the growing body of decisions of the courts and appellate tribunals concerning the powers and procedures of tribunals (a number of which are mentioned here in the notes to individual model rules), it is necessary to have regard to the provisions of the European Convention on Human Rights, particularly Article 6 (which has a wider application than might appear from its reference to the "determination of [ ] civil rights and obligations"), and the decisions and reports of the European Court and Commission of Human Rights. For example, it was necessary to revise substantially the powers of Mental Health Review Tribunals by the Mental Health (Amendment) Act 1982 in order to bring the law into conformity with the decision of the European Court of Human Rights in *X v. the United Kingdom (Judgements of the Court, Series A, Vol. 46).* A more detailed note of the relevance of Article 6.1 of the Convention to hearings and decisions will be found in the notes to model rules D.2–3, E.1–2 and E.1–9.

7. The variety of the functions and jurisdictions of tribunals sets limits to attempts to provide simple, common form, procedural rules which are such that applicants in person, or lay respondents, are able to conduct their

own cases. As the Royal Commission on Legal Services recognised, the complexity of the law which tribunals have to administer militates against a simplification of procedure (see para. 15.12 of the Report of the Royal Commission on Legal Services, Cmnd 7648). There are also the considerations that the needs of the applicants or respondents in tribunals may vary greatly (compare, for example, an appeal to a Social Security Appeal Tribunal or an application heard by a Vaccine Damage Tribunal with an appeal to the Banking Appeal Tribunal) and that adequate provision has to be made to ensure that tribunals have the necessary powers and flexibility. Further, within each body of rules there are different categories of persons to whom specific rules are principally addressed—the lay parties, the advice agencies, the legally qualified and other members of tribunals and their staffs. Procedural rules therefore need to include the following:–

(a) rules aimed primarily at appellants and applicants (and also lay respondents) providing them with guidance and assistance until they become subject to the guidance of the tribunal, its staff or the relevant advice agencies;

(b) rules to ensure that tribunals provide that guidance and assistance;

(c) rules which provide the tribunal with all necessary powers to dispose justly, speedily, efficiently and economically of appeals and applications made to them.

These aims involve giving consideration to the structure of the Rules of Procedure as well as their content and expression.

8. A particular structural problem exists where a tribunal has a varied jurisdiction, whether under one or a number of statutes, which involves different kinds of application or appeal. A course best suited to the lay party would be to produce separate rules for each jurisdiction, but it is recognised that this may not always be practicable or economical. If one set of rules serves more than one jurisdiction of a tribunal, every effort should be made to separate the rules relating to each, at least so far as they concern the initiation of proceedings by appeal or application, into separate parts with distinctive headings and to avoid rules or schedules which require the lay appellant, applicant or respondent to choose out of a number of possible options the one which suits his case.

Rules aimed primarily at appellants/applicants etc.

9. The average lay appellant, applicant or respondent will not usually be accustomed to reading statutory instruments and, although lay members of advice agencies become accustomed to particular rules governing the procedures of the tribunals with which they are concerned, they too will be helped by a structuring of rules which sets out in one initial part in plain terms and logical and chronological sequence a series of steps which the appellant/applicant, and in due course the lay respondent, should follow at the preliminary stages of an appeal or application. This compilation therefore proposes as an initial Part of the Rules (preceded only by the title and possibly an application rule) the rules applicable to bringing an appeal

or application (Head B); such 'appeals rules' are then immediately followed by 'respondents' rules' (Head C). Rules relating to what the tribunal does—the bringing of the case to a hearing, the hearing, decision and general jurisdiction and powers—come later; those who are primarily concerned to apply them will know how to find their way around statutory instruments.

10. Approved forms, with adequate notes (and appropriate guidance material), will best serve the needs of the appellant/applicant and lay respondent. There are, however, disadvantages in prescribing forms and the model rules do not propose them. Approved forms with adequate guidance notes should, however, be made available and the model rules draw the attention of appellants/applicants to their availability. An approved form of reply can be sent to the lay respondent when notifying him of the appeal/application.

11. As is noted above, Heads B and C of the present compilation keep separate the rules relating to appellants/applicants and those relating to respondents in the interests of simplifying for the lay party the identification of which rules are applicable to himself. However, this procedure is repetitious and may well be unnecessary as regards tribunals in which it is likely that legal representation will be the usual practice. For such cases an Appendix B/C provides an alternative which combines certain rules common to both appellant/applicant and respondent.

12. The rules in Heads B and C are designed to give the lay party and his lay advisers in plain terms not only guidance as to how to set an appeal/application in motion (or to reply to one) but also to give some indication, even if it involves duplication, of what will be the next step without his having to seek information as to the later stages from the necessarily more complex later rules. This kind of information should be supplemented in approved forms and guidance literature. Further, procedural rules should, so far as possible, be self-contained and, where procedural provisions are contained in the enabling Act, they should be repeated in the statutory instrument setting out the main body of the procedural rules; this is particularly important when there is a statutory time limit for initiating an appeal or application. The Council deprecate the occasional practice of including some procedural provisions in the enabling Act separate from other provisions as to procedure being made in rules or regulations made by the Minister.

Rules to ensure that tribunals provide guidance

13. The absence of legal aid in proceedings in all but a few of the tribunals placed under the supervision of the Council inevitably means that many lay parties will be without legal assistance in the conduct of such proceedings. Although there is a variety of advice agencies available, a particular burden is placed on the tribunals and their staffs to guide and assist lay parties. In the notes to various model rules attention is drawn to

the role that tribunals, the Chairman and the staff of tribunals should play in this respect. Consideration should be given to the following:–

(a) inserting in all forms and guidance material provided by Departments or the tribunal the appropriate address of the tribunal or its registry, or a note of where, and under what name or description, it can easily be found (in e.g. a telephone directory);

(b) drawing attention in forms and guidance material to the availability of assistance from the offices of the tribunal and the Citizens Advice Bureaux; it would also be helpful if attention could be drawn to local law centres and other advice services;

(c) setting out precise time limits in forms;

(d) giving an indication in forms and notices of the next steps that fall to be taken and of the consequences of failure of a party to take a necessary step in the procedure.

Particular attention is drawn to paragraph (1) of model rule E.1–7 requiring the Chairman of a tribunal to explain the procedure to be adopted by the tribunal and to the practice of Clerks in giving a pre-hearing briefing in order to overcome nervousness and unfamiliarity.

14. One essential step, the inclusion in the notification of an administrative decision of a right of appeal to a tribunal, regrettably, cannot be provided for in the procedural rules of a tribunal because it precedes the involvement of the tribunal. It is, however, of limited use to provide a tribunal for hearing appeals against administrative decisions if the citizen is unaware that he has a remedy. It is thus an essential precondition of an appeal system that the citizen should know of its existence and that he should be told of it when a decision is taken from which an appeal lies. This must be a matter for the principal legislation or for rules regulating the taking of administrative decisions. In this connection, attention is drawn to Resolution (77) 31 of the Committee of Ministers of the Council of Europe (28 September 1977) on the Protection of the Individual in relation to the Acts of Administrative Authorities, which included the following:–

> *"Indication of remedies*
>
> Where an administrative act which is given in written form adversely affects the rights, liberties or interests of the person concerned, it indicates the normal remedies against it, as well as the time limits for their utilisation."

Rules which provide the tribunal with all necessary powers

15. These rules, as their description indicates, are primarily aimed at the tribunal and its staff. They tend to be more voluminous than the rules referred to in paragraphs 9 to 12 above and to be expressed in more 'legal' language and more succinctly. It may be thought desirable to give tribunals a wider range of powers and options than the average case would justify

(though not so as to adopt from the models rules which are of no obvious relevance) and particular consideration will need to be given, e.g., to whether the various powers relating to the calling of witnesses and the production of documents should be conferred on tribunals to be exercised of their own motion and not only on an application by a party. Adequate rule-making power must be included in the enabling Act.

Guide to this compilation of model rules

16. The Table of Contents sets out the general plan of this compilation of model rules. The various stages are set out in separate heads and parts. It will be of particular assistance to those who use rules of procedure if the rules themselves, however short, are furnished with a table of contents and are divided into parts with appropriate headings.

17. Various parts of the compilation have introductory notes explaining the reason for adopting a particular approach or drawing attention to a particular problem. Most of the model rules are accompanied by notes explaining particular issues, drawing attention to precedents or decisions or providing for variations and additions. The notes also draw extensively on the Franks Report which constituted a point of departure for the modern development of tribunals.

18. The stages of the compilation are essentially chronological and proceed from appeal or application to a (first-instance) tribunal, through the reply and pre-hearing procedures to a hearing and a decision and then to an appeal to an appellate tribunal. A distinction is made at the early stages between an appeal to a tribunal from an administrative decision (and a reply by the administrative authority) on the one hand and an application, essentially in party and party proceedings, to a tribunal for relief or in support of a claim on the other. After the initial stages, however, this distinction loses much of its significance and although, for convenience, the rules are, in general, drafted in terms of an appeal and an appellant, they can easily be adapted to an application and an applicant.

19. Rules relating to the powers of the tribunal appear at the stages at which they are required as the appeal/application proceeds towards its decision. However rules relating to the composition and sittings of the tribunal and general rules which do not have a particular chronological context are grouped together separately in Head H of the compilation. This head includes provision for the Chairman to exercise the powers of the tribunal, except the power to decide the appeal/application, and provisions relating to the staff of the tribunal and the powers of subordinate members of the staff to exercise the functions of the chief administrative officer of the tribunal. The latter is referred to as 'the Registrar' throughout the model rules, but a different appellation may be adopted.

20. Miscellaneous rules are set out in Head I, including some definitions. The definitions of 'decision' and 'hearing' are particularly important for an understanding of a number of rules in Heads D and E. This head also

includes a note on references to the Court of Justice of the European Communities under Article 177 of the Treaty of Rome.

Scotland and Northern Ireland

21. With very limited exceptions, the model rules in this compilation are drafted in terms of the law of England and Wales. It should be borne in mind, however, that procedural rules may be made for the whole of the United Kingdom, in which case due account must be taken of the need to make appropriate variations to reflect the terminology and specific characteristics of Scots law (see e.g. model rule F.1–1(5)) and the relevant institutions and authorities of the various parts of the United Kingdom (see e.g. model rule H.1–2(2)). Separate procedural rules for Scotland and Northern Ireland will naturally take these factors into account. Care should be taken in all cases where there are separate rules for tribunal systems with a comparable jurisdiction to provide for the possibility of transfer of cases between tribunals in the different systems (see model rule H.4–2).

Conclusion

22. In adopting rules from this compilation, the following points should be borne in mind:–

(a) italics are used in the text of a model rule where the drafting Department or tribunal needs to consider how it proposes to describe a particular authority or office (see subparagraphs (c) and (d)) or, within square brackets, as an instruction or a reminder when a matter particularly relevant to the individual tribunal's jurisdiction or powers needs to be considered—see e.g. model rule B.2–1(1) line 2 and model rule B.5–1(a); italics are also used to distinguish the notes from the text of the model rules;

(b) passages in square brackets in plain type in the text of model rules are intended as alternatives or additions in the text;

(c) the words "*the Authority*" in italics are used throughout the model rules to indicate the administrative authority or government department from whose decision the initial appeal lies. In the rules when made, "*the Authority*" should if possible be identified in a way that will be familiar to the appellant; if this is not possible because of the length of the name, the full name should be used when it is first referred to and a shorter term both included in parenthesis at that point and defined in the interpretation rule;

(d) the words "*the appropriate office*" in italics are used throughout the model rules to indicate the tribunal's office, whether it is national or regional. See the definitions "appropriate tribunal centre" and "local office of the tribunal" in model rule I.1–5. Forms and notices issued from Departments or the tribunal should state the actual address of the appropriate office;

(e) time limits in the model rules are essentially suggestions. Departments and tribunals drafting rules will need to keep in mind three factors in determining what time limits should be prescribed:–

(i) any limits prescribed in the enabling Act, which should be repeated in the procedural rules: see paragraph 12 above;

(ii) the need to give parties sufficient time to prepare for the stage to which the time limit relates;

(iii) the desirability of keeping up a reasonable momentum in dealing with appeals and applications (see the comments of the Employment Appeal Tribunal quoted at note 7 to model rule H.4–1).

23. Although the model rules are extensive, the essential elements are limited:

—so far as concerns the appellant/applicant (and as regards items (c) to (e) below, the respondent), the aim should be to provide:–

(a) for his awareness of what his rights are (as indicated in para. 14 above, the first stage of this antedates the application of procedural rules) and how the proceedings will develop;

(b) a simple means of invoking the tribunal;

(c) a full opportunity to put his own case and to know his opponent's case;

(d) the removal of ignorance and fears of the procedures of the tribunal;

(e) a right to receive reasons for decisions;

(with necessary repetition for any second instance tribunal);

—so far as concerns the tribunal, the aim should be:–

(i) to provide sufficient power to establish the facts;

(ii) to be able to adapt the procedure to the needs of a particular case;

(iii) to be able to bring on and decide the case with expedition and efficiency;

(iv) to be able to correct mistakes.

24. An illustrative basic set of rules is at Annex B to the compilation.

TABLE OF CONTENTS

HEAD A: ENACTING FORMULA AND INTRODUCTION

			Page
		Introductory Note	1
A.	1–1	Enacting formula	1
A.	2–1	Citation and commencement	2
A.	3–1	Scope of Rules: exceptions	2

HEAD B: APPEALS/APPLICATIONS TO THE TRIBUNAL

		Introductory Note	3
		PART I: FIRST APPEALS	
B.	1–1	Notice of appeal and grounds of appeal	4
B.	1–2	Application for extension of time	7
B.	1–3	Separate statement of grounds of appeal	7
B.	1–4	Time limit for presenting separate statement of grounds of appeal [: application for extension of time] ...	8
		PART II: APPLICATIONS	
B.	2–1	Applications to the Tribunal	8
B.	2–2	Fees for originating application	11
B.	2–3	Publication of originating application	12
		PART III: REPRESENTATIONS TO A DECISION-MAKING AUTHORITY ("MINDED TO" NOTICES) AND REFERENCES BY AN AUTHORITY	
		Introductory Note	12
B.	3–1	Notice of a proposal	13
		Introductory Note	14
B.	3–2	References to a Tribunal by an authority	15

PART IV: PERSONS UNDER A DISABILITY AND SUCCESSION

Introductory Note 15

B. 4–1 Appellant a minor or under a disability 15
B. 4–2 Death of appellant 16

PART V: PROVISIONS RELATING TO ALL APPEALS/ORIGINATING APPLICATIONS

B. 5–1 Additional matters which may be included in a notice of appeal 16
B. 5–2 Documents and other material to accompay originating application 17
B. 5–3 Amendment of appeal and delivery of supplementary grounds of appeal 18
B. 5–4 Withdrawal of appeal 19
B. 5–5 Application for directions 19
B. 5–6 Action of appellant on receipt of notice of hearing ... 20
B. 5–7 Representation at hearing 20

HEAD C: THE RESPONDENT AND THIRD PARTIES

Introductory Note 22

PART I: THE DECISION-MAKING AUTHORITY AS RESPONDENT TO AN APPEAL

C. 1–1 Action by the Authority on receipt of a notice of appeal/statement of grounds of appeal 23
C. 1–2 The respondent of record 24
C. 1–3 Notice that an appeal is misconceived 25

PART II: THE RESPONDENT TO AN ORIGINATING APPLICATION

C. 2–1 Action by respondent on receipt of originating application 25

PART III: SUCCESSION TO RESPONDENTS AND RESPONDENTS UNDER A DISABILITY

Note 27

PART IV: THIRD PARTIES

C. 4–1 Action on receipt of copy of originating application or reply 27

C. 4–2 Addition of new parties to the proceedings 28
C. 4–3 Authority with interest entitled to be heard on an originating application 28

PART V: PROVISIONS RELATING TO ALL RESPONDENTS AND THIRD PARTIES

C. 5–1 Additional matters which may be included in replies by respondents 29
C. 5–2 Additional documents and other material to accompany reply 29
C. 5–3 Amendment of replies and delivery of supplementary statement by way of reply 30
C. 5–4 Failure to reply and absence of opposition 31
C. 5–5 Application for directions 31
C. 5–6 Action by respondent on receipt of notice of hearing ... 31
C. 5–7 Representation at hearing 32

APPENDIX TO HEADS B AND C

PROVISIONS RELATING TO ALL APPELLANTS, APPLICANTS AND RESPONDENTS

(ALTERNATIVE TO HEAD B. PART V AND HEAD C. PART V)

B/C.1 Additional matters which may be included in a notice of appeal or reply 32
B/C.2 Documents and other material to accompany appeal or reply 34
B/C.3 Amendment of appeal or reply and delivery of supplementary grounds of appeal or reply 35
B/C.4 Withdrawal of appeal 35
B/C.5 Failure to reply and absence of opposition 36
B/C.6 Application for directions 36
B/C.7 Action of party on receipt of notice of hearing ... 36
B/C.8 Representation at hearing 37

HEAD D: PRE-HEARING—PROCEDURES AND POWERS

PART I: ACTION BY REGISTRAR ON RECEIPT OF NOTICE OF APPEAL/ORIGINATING APPLICATION AND REPLIES

D. 1–1 Acknowledgement and registration of appeal 39
D. 1–2 Service of documents by Registrar 40
D. 1–3 Notification to third parties 41
D. 1–4 Notification to the office responsible for appointing members of an ad hoc Tribunal 41
D. 1–5 Notification of conciliation machinery 41

D. 1–6 Public notice of originating application 41
D. 1–7 Notice that originating application is misconceived ... 42

PART II: PREPARATION FOR THE HEARING

Introductory Note 43

D. 2–1 Directions in preparation for a hearing 43
D. 2–2 Particulars and supplementary statements 44
D. 2–3 Discovery and inspection of documents and other material 44
D. 2–4 Summoning of witnesses 48
D. 2–5 Agreed facts 49
D. 2–6 Medical examination 50
D. 2–7 Experts: Parties 50
D. 2–8 Experts: the Tribunal 50
D. 2–9 Entry upon land or premises 51
D. 2–10 Varying or setting aside of directions 52
D. 2–11 Failure to comply with certain directions 52
D. 2–12 Consolidation of appeals 53
D. 2–13 Test cases 54

PART III: PRELIMINARY DECISIONS

D. 3–1 Interim relief 54
D. 3–2 Pre-hearing review 55
D. 3–3 Preliminary issues 56

PART IV: NOTICE OF HEARING

D. 4–1 Notice of time and place of hearing 56
D. 4–2 Alteration of time and place of hearing and adjournments 60
D. 4–3 Public notice of hearings 60

HEAD E: DETERMINATION OF APPEALS/ORIGINATING APPLICATIONS

E. 1–1 Power to determine an appeal without a hearing ... 61
E. 1–2 Hearings to be in public—exceptions 61
E. 1–3 Hearings to be in private 63
E. 1–4 Persons entitled to be present at hearings 64
E. 1–5 Exclusion of persons disrupting proceedings 65
E. 1–6 Failure of parties to attend hearing 65
E. 1–7 Procedure at hearing 66
E. 1–8 Decision of Tribunal 70
E. 1–9 Publication of decision 73
E. 1–10 Review of Tribunal's decision 74
E. 1–11 Further consideration 75

E. 1–12 Sanction for disregard of safeguards on confidential information 75

HEAD F: COSTS, EXPENSES AND INTEREST

F. 1–1 Orders for costs and expenses 77
F. 1–2 Payment of expenses 78
F. 1–3 Interest 78

HEAD G: APPEALS FROM TRIBUNALS

Introductory Note 80

PART I: RULES RELATING TO FIRST INSTANCE TRIBUNALS

G. 1–1 Application for leave to appeal 81
G. 1–2 Decision by original Tribunal on application for leave to appeal 82
G. 1–3 Correction of register 82

PART II: RULES RELATING TO APPELLATE TRIBUNALS

Introductory Note 82

G. 2–1 Application to appellate tribunal for leave to appeal ... 83
G. 2–2 Power to treat application as appeal 84
G. 2–3 Notice of appeal 84
G. 2–4 Time limit for appealing 85
G. 2–5 Written representations 85
G. 2–6 Withdrawal of applications for leave to appeal and appeals 85
G. 2–7 Directions 86
G. 2–8 Hearings 87
G. 2–9 Evidence 87

HEAD H: THE TRIBUNAL—COMPOSITION AND GENERAL POWERS

Introductory Note 89

PART I: CONTINUING TRIBUNALS

H. 1–1 Establishment of a number of Tribunals with same jurisdiction/a single Tribunal which may sit in two or more divisions 90
H. 1–2 Panels of chairmen and members 91

H. 1–3 Composition of particular sittings 92
H. 1–4 Composition of Tribunal for a particular class of case ... 93
H. 1–5 Composition of a single continuing Tribunal 93

PART II: AD HOC TRIBUNALS

H. 2–1 Establishment of the Tribunal 94

PART III: ALL TRIBUNALS

H. 3–1 Disqualification 95
H. 3–2 Absence of member of Tribunal 95
H. 3–3 Assessors 96
H. 3–4 Registrar/Secretary/Clerk 96
H. 3–5 The register 97

PART IV: MISCELLANEOUS POWERS OF TRIBUNALS

H. 4–1 Miscellaneous powers of Tribunal 97
H. 4–2 Power to transfer cases 99
H. 4–3 Reference by a technical Tribunal to an appellate tribunal of a question of law 100
H. 4–4 Investigatory Tribunals: appointment of solicitors and counsel; methods of inquiry 100
H. 4–5 Irregularities 101
H. 4–6 Power of Chairman to exercise powers of Tribunal, etc 102

HEAD I: MISCELLANEOUS: DEFINITIONS

Introductory Note 103

I. 1–1 Proof of documents and certification of decisions ... 103
I. 1–2 Method of sending, delivering or serving documents etc 103
I. 1–3 Substituted service 105
I. 1–4 Arbitration 105
I. 1–5 Interpretation 105
I. 1–6 Note on references to the Court of Justice of the European Communities 109

ANNEX A Checklist of matters to be considered when preparing legislation establishing a tribunal or other adjudicative body 110

ANNEX B Illustrative basic rules 117

ANNEX C Responses to Model Rules Consultation Draft ... 146

Introductory Note

1. *In drafting procedural rules, Departments and tribunals should always have in mind the desirability of doing all they can to assist appellants, applicants, and respondents who are not professionally represented in the conduct of their own cases. This object requires consideration to be given to the structure as well as the content and language of the rules. In order to assist appellants/applicants in the conduct of their own cases, it is desirable that those rules which concern the initial stage of bringing the appeal/application are set out at the commencement of the rules of procedure and are not obscured (so far as persons who are not accustomed to looking at legislative instruments are concerned) by preliminary rules concerning definitions and matters of a technical nature such as rules for service of documents. Accordingly it is desirable that such rules as must precede the appeal/application rules (which are set out in Head B) should be kept to the minimum indicated under this Head—i.e. title and jurisdiction—and it is suggested that those preliminary rules need not be entitled as a separate part of the rules of procedure.*

2. *It follows that, in order to avoid distracting the appellant/applicant in person or his lay advisers, definitions and technical matters, as well as revocations, should be set out at the end of the procedural rules.*

A.1–1 Enacting formula

The *Secretary of State*, in exercise of the powers conferred on him by [*the relevant provision of the enabling Act*], and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971, hereby makes the following Rules.

Notes

1. *This formula recites that the rule-making authority has complied with the requirements of section 10 of the Tribunals and Inquiries Act ("TIA") to consult the Council on Tribunals before making, approving, confirming or concurring in procedural rules. Departments and other rule-making authorities should ensure that the current statutory authority is cited for the enabling Act and the requirement to consult the Council on Tribunals.*

2. *In these model rules, the word "rules" is used for procedural rules. Some enabling Acts, however, refer to the making of regulations or orders for procedure.*

A.2–1 **A.2–1 Citation and commencement**

These Rules may be cited as the ... Tribunal[s] (Procedure) Rules 19... They shall come into force on .... 19...

Note

The enabling Act may establish one tribunal (whether or not it sits in two or more divisions) or a series of tribunals with the same subject jurisdiction.

A.3–1 Scope of Rules: exceptions

These rules shall have effect for the purpose of proceedings before [the ..... Tribunal] [all ..... Tribunals] other than proceedings arising from an appeal made under [*state the enactment(s) establishing the exceptional jurisdiction*].

Note

A rule defining the scope of the rules of procedure is only necessary if the tribunal has more than one jurisdiction and one or more jurisdiction requires a substantially different procedure from the others.

HEAD B: APPEALS/APPLICATIONS TO THE TRIBUNAL

Introductory Note

1. *The purposes for which tribunals are commonly established are:–*

   (a) to provide an appeal against an original decision of an administrative authority;

   (b) to provide a specialised forum for hearing disputes of a particular nature between parties (with or without a public element).

   Model rules for the initial stage of bringing appeals as regards category (a) are to be found in part B.I below, and for the initial stage of making applications as regards category (b) are to be found in part B.II below.

2. *However, the purposes for which tribunals or bodies with adjudicative functions have been established go wider than categories (a) and (b) and include:–*

   (c) the determination of applications (or particular issues arising in applications) for an original decision by an authority (e.g. an application for a benefit such as a payment under the Vaccine Damage Payments Act 1979) which, if not granted by the authority, is to be referred to a tribunal;

   (d) the determination of issues between a regulatory authority and those subject to its jurisdiction (which may involve an investigation into how the latter carry on their business or profession). When the regulatory authority has already made a decision, the matter should properly fall within category (a). However, provision may be made for hearing representations, either by the authority itself or by an independent tribunal, against proposed decisions and this may require a difference in the way the proceedings are instituted as well as subsequent procedures.

   Model rules applicable to the initial stage of invocation of tribunals or adjudicative bodies in cases of this kind are to be found in part B.III below.

3. *Tribunals may also be established to hear appeals from tribunals of first instance. See Head G below.*

4. *Common rules relating to persons under a disability, to succession and to the initial stages of proceedings in categories (a) to (d) are to be found in parts B.IV and B.V below.*

B.1–1 **B.1–1 Notice of appeal and grounds of appeal**

(1) An appeal to the ... Tribunal shall be made by written notice. An approved form which may be used for making an appeal may be obtained from the offices of [*the relevant department*[1]] or *the appropriate office*[2] of the Tribunal. If a copy of the approved form is not for any reason available, the notice of appeal may be in such form as the Tribunal may accept.

(2) The notice of appeal shall state:–

(a) the name and address of the person making the appeal (who is referred to in these Rules as "the appellant");

(b) that the notice is a notice of appeal;

(c) the date and any reference number of the decision against which the appeal is brought (here referred to as "the disputed decision"), and the name and address of *the Authority*[3] from which the disputed decision was received;

[(d) the grounds of the appeal;]

(e) the name and address [, and the profession,] of the representative of the appellant, if any, and whether the Tribunal should send replies or notices concerning the appeal to the representative instead of the appellant.

(3) The appellant shall attach to the notice of appeal a copy of the disputed decision.

(4) The appellant or his representative shall sign the notice of appeal.

(5) The appellant must send or deliver the notice of appeal to the Registrar of the Tribunal at *the appropriate office* of the Tribunal so that it is received at *the appropriate office* not later than twenty-eight days after the date on which the disputed decision against which he appeals was given to or served upon the appellant.

(6) The Registrar will acknowledge the receipt of the notice of appeal and will inform the appellant or his representative of any further steps which he must take to enable the Tribunal to decide the appeal, and the time and place of the hearing of the appeal.

Notes

1. The Council on Tribunals consider it is desirable, particularly in cases where

---

[1] See para. 22(a) of the General Introduction.
[2] See para. 22(d) of the General Introduction.
[3] See para. 22(c) of the General Introduction.

an appellant is unlikely to be professionally represented, that provision for a notice of an appeal to a tribunal should be made by way of an approved form which may be filled in by the appellant. To prescribe a form in the rules, however, may result in an unnecessary rigidity and inhibit the amendment of forms as circumstances require. This rule, therefore, merely sets out what is required to be contained in a notice of appeal, leaving it to the Department or the tribunal (or the President of Tribunals) to adopt an appropriate form, with guidance for completing it, and to make copies available at relevant Departments and offices.

2. *The content and shape of the form will be substantially determined by the jurisidiction and procedures of the particular tribunal and may be considerably influenced by assumptions about the prospective appellants/applicants and respondents and by the nature and extent of the guidance material to be available to them. "Model forms" would, therefore, be of little assistance to Departments and tribunals. The latter are advised to consult the Departmental Forms Unit or the Forms Unit of the Lord Chancellor's Department when designing their own forms.*

3. *In preparing forms, the Department or tribunal should draw particular attention to such preliminary points as may be especially relevant such as where a preliminary application or a notice as to evidence needs to be brought to the attention of the tribunal at an early stage. Examples of such preliminary matters are set out in model rule B.5–1. It may be thought desirable to include more than one such point. In deciding what should be included in, or should accompany, the initial notice of appeal, it is necessary to take into account the following considerations:–*

   (a) the desirability of avoiding overloading the requirements where that might overawe or confuse an unsophisticated appellant; such appellants must be able to rely on the Registrar to assist them in ensuring they have all necessary material available to the tribunal and the other parties at the appropriate stages prior to the hearing and at the hearing itself;

   (b) the desirability of ensuring both that the tribunal and the other parties shall have, as early as possible, a reasonable indication of the content of the appeal and of limiting the occasions on which it is necessary to seek further information and material from the appellant. A particular point for consideration, when the enabling Act permits the suspension of an administrative decision if an appeal is made, will be the desirability of including in the initial notice of appeal a request for such suspension.

4. *The address of the Registry or other office of the tribunal to which notices or communications should be addressed should be printed or stamped on all copies of forms supplied to prospective appellants and, at appropriate stages, forms or accompanying guidance literature should give an adequate indication of the procedure followed by the tribunal and 'what happens next', state the availability of staff of the tribunal to provide advice, and draw attention to the facilities provided by the Citizens Advice Bureau and any other relevant local advice agency such as a Law Centre or office of the UKIAS.*

5. *In* Burns International Security Service (UK) Ltd v Butt *[1983] ICR 547,*

B.1–1

EAT, it was held that although the requirement of the rule in the 1980 Industrial Tribunals Rules corresponding to paragraphs (1) and (2) of this model rule that an originating application was to be in writing was mandatory, the other requirements of paragraph (2) were directory only; see also Doff v. British Telecom *[1988] IRLR 16 noted in 1988 CJQ 366.*

6. *Notice of appeal to a tribunal from an administrative authority should be given to the tribunal rather than to the administrative authority from whose decision the appeal is brought. Where the first stage in questioning an administrative decision is to require the administative authority to review its decision (e.g. by a DSS adjudication officer), it is important to ensure that the form conveying the original decision makes it clear that what will take place is an administrative review, but if the individual remains dissatisfied after that review, he will have a right of appeal to an* **independent** *tribunal. Similarly, the form in which the outcome of the administrative review is communicated to the individual should make it clear that it is an administrative act of the Department and the right of appeal to an* **independent** *tribunal should be repeated.*

7. *It is important that the time limits should be reasonable and defined as clearly as possible in the rules. This is particularly the case when, under the enabling Act, the jurisdiction of the tribunal depends (under a formula such as ". . . shall only be entertained by the tribunal if presented within . . .") on appeals being made within a statutory time limit.* ***A rule prescribing the time limit for appealing should always be included in the procedural rules notwithstanding that it repeats a provision in the enabling Act.***

8. ***The time within which notice of appeal must be given should be sufficient to afford the appellant opportunity to take advice so as to enable him to include in his notice a statement of the grounds of appeal,*** *thus avoiding an additional stage for the submission of grounds of appeal. If, however, the times for giving notice of appeal prescribed by the enabling Act are so limited as to make it onerous for the appellant to include the grounds of appeal in his notice of appeal, such a separate stage may be required. In that case, paragraph (2)(d) of the rule, should be omitted and separate rules in the form of model rules B.1–3 and B.1–4 added after model rule B.1–2. The form of notice of appeal should contain an additional note drawing attention to the ability of the appellant to file a separate statement of grounds of appeal and the availability of any form for that purpose. An exceptional provision when time is so limited as only to allow an oral notice of appeal is made in the proviso to rule 6(1) of the Immigration Appeals (Procedure) Rules 1984 (S.I. 2041).*

9. *Rules as to service are not easy for the layman to understand and it is considered that this rule should state precisely and clearly what is required, hence the reference to "received" rather than "presented" which is used more traditionally. (See* Beanstalk Shelving Ltd v. Horn *[1980] ICR 273, EAT, at 274: "a complaint is treated as having been "presented" when it is received by the central office of industrial tribunals").*

10. *Where a form is provided for an appeal, it may be desirable to envisage the*

need to allow time for obtaining the form. A possible rule, as a proviso to paragraph (5), is as follows:–

> *"Provided that where a person has informed the Tribunal [the Authority] in writing before the expiry of the period of .... days set out above of his intention to appeal, and a completed approved form is received at the appropriate office of the Tribunal not later than twenty eight days after that form was given or sent to the appellant by the Tribunal [the Authority], the notice shall be deemed to have been received by the Tribunal at the time it [the Authority] was informed of the intention to appeal".*

11. *Copies: The Council are in favour of a procedure whereby the tribunal is the post box for formal communications between the parties rather than parties serving documents on each other. The Council are also of the view that, so far as private parties are concerned, notices to other parties (but not evidence, see model rule B.5–2) should be copied by the Registry.*

12. *There may be special cases where the appellant/applicant is not the person most intimately concerned, e.g. an application by a relation in respect of a patient under the Mental Health Act. Any form or rule should then provide for the identification of both the applicant and the person on whose behalf the application is brought.*

B.1–2 Application for extension of time

Notwithstanding paragraph (5) of rule B.1–1, where the appellant considers it likely that, [by reason of exceptional circumstances,] a notice of appeal will be received at the appropriate office later than twenty eight days after the date on which he was given or served with the disputed decision, he may include with his notice of appeal a statement of the reasons on which he relies for justifying the delay, and the Tribunal shall treat any such statement of reasons for delay as a request for extending the time limit.

Note

This model rule makes provision for application for an extension of the time limit. So far as a notice of appeal is concerned it would be as well to stress in this rule that delays are only justified in exceptional or special circumstances so that the appellant is warned at the outset of any qualifications on the tribunal's power to extend the time limit. See the notes to model rule H.4–1(2)(a).

B.1–3 Separate statement of grounds of appeal

(1) The appellant may state his grounds of appeal either in the notice of appeal itself or in a separate written statement. If the grounds of appeal are set out in a separate written statement, the statement shall also contain:–

(a) the name and address of the appellant; and

B.1–4

(b) a statement that the appellant has sent or delivered to the Tribunal a notice of an appeal and the date on which he sent or delivered the notice of appeal.

(2) A form approved by the Tribunal, which may be used for making a separate written statement of grounds of appeal, may be obtained from the offices of [*the relevant department*] or *the appropriate office* of the Tribunal. If a copy of the approved form is not, for any reason, available to the appellant, the statement may be in such form as the Tribunal may accept.

(3) A separate written statement shall be signed by the appellant or his representative and shall be sent to the Registrar of the Tribunal at *the appropriate office* of the Tribunal.

Note

The possible need for a separate statement of grounds of appeal is noted in note 8 to model rule B.1–1. See note 2 to model rule B.1–1.

B.1–4 Time limit for presenting separate statement of grounds of appeal [: application for extension of time]

(1) A statement of grounds of appeal must be received at *the appropriate office* not later than .... days after the date on which the disputed decision was given to or served on the appellant.

[(2) Notwithstanding paragraph (1) above, where the appellant considers it likely that a statement of grounds of appeal will be received at *the appropriate office* after the end of the period referred to in paragraph (1), he may include with his statement of grounds of appeal an additional statement of the reasons on which he relies for justifying the delay, and the Tribunal shall treat any such additional statement as a request for extending the time limit.]

Notes

1. *Such a provision is only necessary in connection with a rule which provides for a separate statement of grounds of appeal: see note 8 to model rule B.1–1.*

2. *For time limits generally, see the notes to model rule B.1–1. It may not be necessary to stress the fact that delay can only be justified in exceptional or special circumstances so far as a separate statement of grounds of appeal is concerned, since the appellant will have already invoked the jurisdiction of the tribunal by his notice of appeal.*

PART II: APPLICATIONS

B.2–1 Applications to the Tribunal

(1) An application to the ..... Tribunal under section ..... of the .....

Act for [*state purpose of the application*] shall be made in writing. An approved form which may be used for making an application may be obtained from *the appropriate office*[4] of the Tribunal. If a copy of the approved form is not for any reason available, the application may be in such form as the Tribunal may accept.

(2) The application shall state:–

(a) the name and address of the person making the application (who is referred to in these Rules as "the applicant");

(b) the names and address or addresses of the person(s) or authority against whom [the application is brought] [relief is sought];

(c) the address and description of the [*property/land*] which is the subject of the application;

(d) [the claim of the applicant and the grounds on which it is made] [the grounds on which relief is claimed];

(e) the name and address [, and the profession,] of the representative of the applicant, if any, and whether the Tribunal should send replies or notices concerning the application to the representative instead of to the applicant.

(3) The applicant or his representative shall sign the application.

(4) The applicant shall send or deliver the application to the Registrar of the Tribunal at *the appropriate office* of the Tribunal.

(5) The Registrar will acknowledge the receipt of the application and will inform the applicant or his representative of any further steps which he must take to enable the Tribunal to decide the application, and the time and place of the hearing of the application.

(6) An application made under this rule is referred to as an "originating application".

Notes

1. *This rule is designed for applications to a tribunal otherwise than by way of appeal against a decision of an administrative authority and may be used whether the procedure is essentially inter partes or whether there is a public law element involving a public authority. As regards the latter, the Council take the view that, as in the case of appeals against decisions of administrative authorities, the application should be made to the tribunal and not to the authority concerned.*

2. *There may however be cases where any application, e.g. for a statutory benefit, is made to an authority and that authority has power to refer*

[4] See para. 22(d) of the General Introduction.

particular issues to a tribunal. (See for example claims under the Vaccine Damage Payments Act 1979). An initial application to a tribunal may then be inappropriate since the matter may not raise any issues which the authority would consider it necessary to refer to a tribunal. In such a case the appropriate course would be for an application or claim to be made to the authority; the proceedings before the tribunal would then commence with a reference from the authority and not by appeal or application: see model rule B.3–2.

3. *As with appeals (see note 1 to model rule B.1–1), the Council on Tribunals favour the use of approved forms particularly where an applicant is unlikely to be professionally represented. The wide variation in the jurisdiction of tribunals to which applications may be made will need to be reflected both in the text of the form and in the accompanying explanatory notes. In drawing up forms, Departments and tribunals should seek the advice of the Department's Forms Unit or the Forms Unit of the Lord Chancellor's Department.*

4. *In preparing forms, Departments and tribunals should draw attention to such preliminary points as may be especially relevant. Examples of such preliminary matters are set out in model rule B.5–1. It may be thought desirable to include more than one such point. However, as is mentioned in the notes to model rule B.1–1, in deciding what should be included in, or should accompany, the originating application, it is necessary to take into account the following considerations:–*

   (a) the desirability of avoiding overloading the requirements where that might overawe or confuse an unsophisticated applicant; such applicants must be able to rely on the Registrar to assist them in ensuring they have all necessary material available to the tribunal and other parties at the appropriate stages prior to the hearing and at the hearing itself;

   (b) the desirability of ensuring both that the tribunal and the other parties shall have, as early as possible, a reasonable indication of the content of the application and of limiting the occasions on which it is necessary to seek further information and material from the applicant.

5. *A particular consideration where the matter concerns land may well be the extent to which persons claiming an interest in the land other than the applicant and the respondent should be made parties. In such cases the following paragraph, based on rule 13 of the Agricultural Land Tribunals (Rules) Order 1978 (S.I. 259), may be added to this rule and a comparable item added to any approved form:*

   "When an application is made to the Tribunal in respect of any land the whole or any part of which is sub-let, every landlord, tenant or subtenant of that land shall be a party to the proceedings on that application."

6. *For documents to accompany the application, see model rule B.5–2.*

7. *Time limits may be provided in the enabling Act for some applications but*

not for others. Where appropriate, rules B.1–1(5) and B.1–2 may be adapted as follows:

> *"( ). The applicant must send or deliver the application to the Registrar of the Tribunal at the appropriate office of the Tribunal so that it is received at the appropriate office not later than three calendar months after* [the event giving rise to the claim].
>
> *( ). Notwithstanding paragraph ( ) of rule B.2–1, where the applicant considers it likely that [,by reason of exceptional circumstances,] an originating application will be received at the appropriate office after the end of the period referred to in paragraph ( ) of rule B.2–1, he may include with his originating application a statement of the reasons on which he relies for justifying the delay, and the Tribunal shall treat any such statement of reasons as a request for extending the time limit."*

Time limits should be set out in any approved form. For applications out of time, see model rule H.4–1(2)(a) and the notes to it.

8. In Bodhu v Hampshire Area Health Authority *[1982] ICR 200, the EAT expressed the hope that the rules concerning the time limit for bringing applications to an industrial tribunal might be amended so that time ran from the exhaustion of internal disciplinary/appeal procedures.*

B.2–2 Fees for originating application

(1) The applicant shall send to the Registrar with his originating application [a fee of £.....] [such fee as may be determined by the Lord Chancellor from time to time with the consent of the Treasury]. The fee shall be set out in any form approved for the purpose of making an application.

(2) The fee shall be paid by cheque or postal order, drawn in favour of Her Majesty's Paymaster-General.

[(3) If the proceedings are determined without an oral hearing, one half of the fee shall be repaid to the applicant.]

Notes

1. The position of the Council on Tribunals on the charging of fees in respect of proceedings before tribunals and inquiries is summarised in their Annual Report for 1986–87 at paras. 2.35–2.41. It is the view of the Council that provision for the charging of fees should be exceptional, and that fees should not be charged:–

(a) where the liberty of the subject is involved, in claims for social welfare benefits, in education or health matters or in appeals to tax tribunals;

(b) for hearings before a licensing authority which determine the right of an individual or body to pursue a livelihood;

(c) in respect of a tribunal established as an instrument of social policy for

B.2–3

disputes between individuals as in the case of rent controls and industrial relations.

Other considerations may apply where a tribunal is provided as an expert alternative to a court (e.g. Copyright Tribunal and certain jurisdictions of the Lands Tribunal) but, even so, the fees should not be excessive or act as a deterrent to prospective parties.

2. *The second alternative in paragraph (1) would enable the fee to be altered without there being a need to amend the rules.*

B.2–3 Publication of originating application

The applicant shall comply with any directions of the Tribunal for giving public notice of an originating application and shall notify the Registrar in writing when he has done so.

Notes

1. *For the power of the tribunal to give such directions see model rule D.1–6.*

2. *Alternative provisions for publishing an advertisement of an originating application are:–*

   (a) for the relevant authority, or the tribunal itself, to publish an advertisement; see rule 11 of the Commons Commissioners Regulations 1971 (S.I. 1727);

   (b) for the applicant to be required by the rules themselves to insert appropriate advertisements. In such a case it would be desirable for the tribunal to provide an approved form for such advertisements. A rule for this purpose is as follows:

   > *"The applicant shall insert two separate advertisements of his having made an originating application in a local newspaper circulating in the area where the property is situated. The advertisements shall be in a form approved by the Tribunal and copies of the form may be obtained from the Registry or appropriate office of the Tribunal. The advertisements must appear in separate editions of the same newspaper within the twenty eight days immediately following the delivery of the originating application to the Tribunal and the second advertisement shall be published not more than seven days after the first advertisement is published."*

3. *See also model rule D.1–6.*

PART III: REPRESENTATIONS TO A DECISION-MAKING AUTHORITY ("MINDED TO" NOTICES) AND REFERENCES BY AN AUTHORITY

Introductory note to model rule B.3–1

1. *Certain statutes provide for the registration and regulation of persons*

carrying on particular businesses. A refusal by the regulatory authority to register a person, or the exercise of the statutory powers of regulation (e.g. by suspension or revocation of a licence or the attachment of new conditions), may, therefore, have a serious effect on the livelihood of the persons concerned. In a number of cases provision has been made which requires the regulatory authority to give notice to the individual concerned before taking a decision which would have adverse consequences, and inviting the latter to make representations. The representations are considered by, and any oral hearing takes place before, the regulatory authority itself.

2. *The procedure in such cases is initiated by the regulatory authority, if it is "minded" or purposes to consider making the relevant adverse decision, giving notice to that effect to the individual concerned. Such a procedure may well be required by the statute (Consumer Credit Act 1974 and the Estate Agents Act 1979) or adopted by the authority itself (the Data Protection Registrar). An appropriate procedural rule supplementing a statutory requirement and ensuring that the individual is aware of the case he has to meet is set out in model rule B.3–1. (For a variant of such provisions when the regulatory authority is required not to exercise discretionary or other powers adversely without giving an interested party an opportunity of being heard, see section 43 of the Trade Marks Act 1938 and rules 116 to 120 of the Trade Marks and Service Marks Rules 1986 (S.I. 1319)).*

3. *More formal provision is made in other regulatory statutes for the regulatory authority to refer the proposed exercise of a power (section 14 of the Misuse of Drugs Act 1971) or the exercise of a power (section 396 of the Insolvency Act 1986; section 97 of the Financial Services Act 1986), either of its own volition or when required by a person affected, to an independent tribunal for investigation and report. Such a provision will be found in the statute itself. While a provision which, in appropriate cases, enables the proposed exercise of a power to be referred by the regulatory authority to an independent tribunal is to be welcomed, the Council are of the view that, where a decision has been taken, an appeal against the decision should lie direct to the tribunal (as in model rule B.1–1), rather than by requiring the regulatory authority to refer the matter to the tribunal and that, in any case where there is an appeal to a tribunal, the decision should be that of the tribunal itself rather than that of the regulatory authority on the report of the tribunal.*

B.3–1 Notice of a proposal

(1) Where *the regulatory authority*[5] gives notice to any person [that he is minded to] [informing him of the proposal to] ..... under the Act, the notice shall inform the person affected of the substance of the proposed decision and:–

(a) the matters which *the regulatory authority* would propose to specify as the grounds for that decision; and

[5] Substitute the name of the regulatory authority as in para. 22(c) of the General Introduction.

B.3–1 (b) such other matters as *the regulatory authority* has taken into account in considering the proposed decision.

(2) Every notice shall:–

(a) invite the person affected, within such period being not less than twenty one days as may be specified in the notice, to provide *the regulatory authority* with his representations in writing as to why such decision should not be made (or, as the case may be, should be varied), and, if he thinks fit, to notify *the regulatory authority* that he wishes to make representations orally and the grounds on which he wishes to have an oral hearing; and

(b) inform the person affected of the procedure *the regulatory authority* will follow on receipt of such representations.

Note

The procedure following the submission of such representations would not necessarily follow that appropriate in the case of an appeal or an application, but should make provision for:–

(a) a decision whether to hold an oral hearing (and, in the event of the matters in issue being in dispute between various parties, whether it is to be in public);

(b) notice of an oral hearing;

(c) representation and evidence;

(d) a decision by the regulatory authority, together with the reasons and the facts on which it is based, and notification of any right of appeal.

Introductory note to model rule B.3–2

Provision may be made by statute for an administrative authority to refer certain issues to an independent tribunal (see, e.g. section 4 of the Vaccine Damage Payments Act 1979, where particular issues relating to a claim for payments may be referred to a medical tribunal, and section 5(6) of the Commons Registration Act 1965, where a registration authority is required to refer disputes to a Commons Commissioner). The proceedings before the tribunal will not be commenced unless and until a particular reference is made though the matter may have been initiated by an (earlier) application to the authority concerned.

The jurisdiction of a tribunal is usually set out in the enabling Act and, consistent with that practice, the Vaccine Damage Payments Act itself sets out the circumstances in which a reference may be made to a tribunal and the issues that may be referred. In both the examples referred to above the decision is that of the tribunal. An appropriate procedural rule supplementing the statutory provision in order to provide for the reference to the tribunal, and to furnish the tribunal with relevant material produced to or by the authority at any earlier stage, is set out below (cf. rule 9 of the Commons Commissioners Regulations 1971 (S.I. 1727)). If the tribunal is appointed ad hoc, it will be necessary to include provision for

appointment: see model rule H.2–1. Rules regulating the subsequent stages by and before the tribunal may follow a more usual course.

B.3–2 Reference to a Tribunal by an authority

(1) Where [*the statutory requirements for a reference are satisfied*], *the Authority* shall refer to the Tribunal:–

(a) } [*the issues within the*
(b) } *Tribunal's jurisdiction*]

or such of them as may be relevant to the matter, and shall provide the Tribunal with copies of the [applicant's claim [and the relevant objections to it] and such other material as has been produced to or considered by *the Authority* in considering the claim [and such objections]].

(2) *The Authority* shall give notice to the applicant [and every objector] of the reference to the Tribunal.

EXPLANATORY NOTE ON THE MODEL RULES

EXCEPT WHEN A PARTICULAR RULE WOULD APPEAR TO HAVE RELEVANCE ONLY OR PRIMARILY TO APPLICATIONS, THE MODEL RULES FROM THIS POINT ONWARDS ARE DRAFTED IN TERMS OF APPEALS. HOWEVER, WHETHER DRAFTED IN TERMS OF APPEALS OR OF APPLICATIONS, THEY CAN, IN THE MAJORITY OF CASES, BE ADAPTED TO SERVE THE PURPOSES OF THE OTHER.

PART IV: PERSONS UNDER A DISABILITY AND SUCCESSION

B.4–1 Appellant a minor or under a disability

(1) When the person by whom an appeal may be brought is under the age of 18 years, or is prevented by mental or physical infirmity from acting on his own behalf, the appeal may, subject to any conditions imposed by the Tribunal, be brought by a parent or guardian, or by a person appointed by the Tribunal.

(2) When an appeal is brought by a person acting on behalf of another, that person may take all such steps and do all such things for the purpose of the appeal, as an appellant is by these Rules required or authorised to take or do.

Notes

1. This model rule is designed for general use, but paragraph (1) may not be suitable for more specialised tribunals. For example, it may be necessary to substitute some other age for 18 if the tribunal has the power (as Social Security Appeal Tribunals have power) to entertain claims from younger

B.4–2 *persons. See also the notes relating to representatives appended to model rule B.5–7. (Special provision is made in the Mental Health Act 1983* **requiring** *the managers of a hospital to refer a patient to a Mental Health Review Tribunal in certain cases).*

2. *This rule may be adapted for appellants/applicants whose disability is legal, as well as mental or physical. See rule 7 of the Foreign Compensation Commission (People's Republic of China) Rules Approved Instrument, 1988 (S.I. 153) (unincorporated associations).*

B.4–2 Death of appellant

If a prospective appellant or an appellant dies and there is no legal personal representative, the [*Authority*] [Tribunal] may appoint such person as it may think fit to make or carry on with the appeal; and these Rules shall apply, subject to the necessary modifications, to the making and continuation of the appeal by the person appointed by the [*Authority*][Tribunal] until a legal personal representative has been appointed as they apply to an appellant.

Notes

1. *This model rule is adapted so far as the continuation of an appeal is concerned from rule 28 of the Supplementary Benefit (Claims and Payments) Regulations 1981 (S.I. 1525). More extensive provision is to be found in Schedule 12 to the Employment Protection (Consolidation) Act 1978. See also rule 13 of the Value Added Tax Tribunals Rules, 1986 (S.I. 590) which applies both to death and to bankruptcy.*

2. *As to the powers of an industrial tribunal to substitute parties more generally, see* Watts v Seven Kings Motor Car Co. Ltd. and Anor. *[1983] ICR 135, EAT.*

PART V: PROVISIONS RELATING TO ALL APPEALS/ORIGINATING APPLICATIONS

B.5–1 Additional matters which may be included in a notice of appeal

The appellant may include in his notice of appeal or in a separate notice to the Tribunal:–

[(a) a request that the disputed decision shall be suspended until a decision has been given on the appeal [*or other interim relief*];]

[(b) a request for an early hearing of the appeal, and the reasons for that request;]

[(c) [a request for an oral hearing of the appeal] [a statement that the Tribunal may proceed to decide the appeal without an oral hearing];]

[(d) a notification that, at the hearing of his appeal, he intends to call an expert witness or expert witnesses and the name and address of the proposed witness or witnesses;]

[(e) a request that an expert who was concerned in the taking of the disputed decision shall attend the hearing of the appeal and give evidence].

Notes

1. *There may well be preliminary points which the appellant/applicant wishes to have brought to the attention of the tribunal at an early stage, e.g. a request for the suspension of the disputed decision. The tribunal itself may wish for early notice of such matters or of the intentions of the appellant/applicant as to evidence. Where a tribunal has a discretion not to hold an oral hearing, this should be explained to appellants so that they can have an opportunity of explaining on the appeal form why they need an oral hearing. These and a number of other preliminary or evidentiary points are set out in this model rule. It should be borne in mind, however, that some of these matters may only be included if the enabling Act provides for them expressly (e.g. the power to suspend an administrative decision or to grant other interim relief: for this, see notes to model rule D.3–1).*

2. *If an appeal/application form is used, the relevant provision(s) or requirement(s) should be included in the form—regard being had to the desirability of not overloading the form—see note 3 to model rule B.1–1.*

3. *An alternative means of inviting applications such as those set out in this rule would be in the Registrar's acknowledgement of the notice of appeal: see model rule D.1–1.*

B.5–2 Documents and other material to accompany originating application

(1) The applicant shall send or deliver to the Registrar with his originating application a copy of every [map, plan, certificate, report or other document] on which he intends to rely for the purposes of the application, together with a sufficient number of additional copies of each of them to enable the Registrar to provide a copy to each of the other parties to the proceedings:

Provided that the Tribunal may, on such terms as it thinks fit, excuse an applicant from providing any [map, plan, certificate, report or other document] required to be furnished under this rule where the [map, plan, certificate, report or document] or a copy is already in the possesion of the Tribunal or some other party so that to require it to be provided at this stage would be unreasonable on the grounds of expense or otherwise.

(2) If any [map, plan, certificate, report or other document] on which the applicant relies contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information

B.5–3 communicated or obtained in confidence, or considerations of national security are involved, and for that reason the applicant seeks to restrict its disclosure, he shall inform the Registrar of that fact and of his reasons for seeking such a restriction. In any such case, the Registrar shall serve the copies as provided in this rule only in accordance with the directions of the Tribunals.

Notes

1. *This rule deals with two matters—the provision of documentary evidence to support an application and the steps open to an applicant to protect confidentiality and national security. It could be adapted, as necessary, to an appeal.*

2. *In certain cases the tribunal may need a particular description of document in order properly to perform its function. Since what is required is evidence, and not a 'pleading', the Council take the view that copies for parties should be provided by the applicant/appellant and not by the Registrar, though the Registrar will be responsible for distributing them.*

3. *An unqualified requirement for a particular description of document might operate harshly, hence the proviso to paragraph (1). It might also involve unnecessary disclosure of confidential material, hence paragraph (2). If an application/appeal form is used, the relevant requirement under paragraph (1) should be included in the form with appropriate explanatory notes covering the proviso and paragraph (2).*

4. *Further provisions relating to confidentiality and national security are set out in model rule D.2–3; see particularly paragraph (3).*

B.5–3 Amendment of appeal and delivery of supplementary grounds of appeal

(1) The appellant may, at any time before he is notified of the date of the hearing of the appeal, amend his notice of appeal or any statement of grounds of appeal or deliver a supplementary statement of grounds of appeal.

(2) The appellant may amend any notice of appeal or statement of grounds of appeal with the leave of the Tribunal at any time after he has been notified of the date of the hearing of the appeal or at the hearing itself. The Tribunal may grant such leave on such terms as it thinks fit, including the payment of costs or expenses.

(3) The appellant shall send a copy of every amendment and supplementary statement to the Registrar.

Notes

1. *The appellant's power to amend and deliver a supplementary statement, together with the tribunal's powers (rule D.2–2) to give directions to a party to provide supplementary statements, make it unnecessary to provide expressly for a rejoinder to the respondent's reply.*

2. *It may be desirable, however, particularly where the authority against which an appeal is brought is required to provide a statement of facts, to obtain from the appellant an indication of which facts he accepts or disputes. In such a case, a rule on the following lines may be considered:–*

> *"Not later than ..... days after the appellant receives the statement mentioned in rule C.1–1, the appellant shall send to the Registrar a statement specifying–*
>
> *(a) which matters of fact (if any) contained in the statement he disputes;*
>
> *(b) any additional matters relating to the statement which he considers should be drawn to the attention of the Tribunal."*

B.5–4 Withdrawal of appeal

(1) The appellant may:–

(a) at any time before the hearing of the appeal withdraw his appeal by sending to *the appropriate office* a notice stating he withdraws his appeal signed by him or his representative;

(b) at the hearing of the appeal, with the leave of the Tribunal, withdraw his appeal.

[(2) Where an appeal is withdrawn, a fresh appeal may not be brought in relation to the same decision except with the leave of the Tribunal.]

Notes

1. *The Social Security (Adjudication) Regulations 1986 (S.I. 2218) make the withdrawal of an appeal prior to a hearing subject to the consent of the administrative authority or other parties. This is designed to safeguard the interests of the applicant in cases where pursuing the appeal would be to his advantage. In general, however, it would not seem appropriate to impose such a condition on withdrawal of first appeals before hearings. But see the notes to model rule G.2–6 for withdrawal in appellate tribunals.*

2. *Paragraph (2) restricts the right of appeal. It would require a rule-making power in the enabling Act which goes beyond a power to regulate practice and procedure, e.g. a power to regulate the exercise of the right of appeal, cf. para. 4 of Schedule 3 to the Data Protection Act 1984.*

3. *Where reference is made in any form, whether issued by the tribunal or an authority, to the withdrawal of an appeal, care should be taken to ensure that it is not in such terms as appear to urge the appellant to withdraw.*

B.5–5 Application for directions

The appellant may apply to the Tribunal to give directions as to any matter relating to the hearing of his appeal. Unless made during a pre-hearing review, an

B.5–6 application for directions shall be made in writing to the Registrar at *the appropriate office* [with sufficient copies to enable the Registrar to serve a copy on each of the other parties].

Note

For the powers of a tribunal on such an application, see Head D, Part II.

B.5–6 Action of appellant on receipt of notice of hearing

(1) The Registrar will serve on the appellant a notice informing him of the time and place of any oral hearing which is to be held which, unless the parties otherwise agree, shall not be earlier than twenty one days after the date on which the notice is sent. Such notice will include, in a form approved by [the President of] the Tribunal, guidance regarding the rules of evidence and procedure which apply to the hearing.

(2) When he receives the notice of the time and place of hearing, the appellant shall inform the Tribunal whether or not he intends to attend or be represented at the hearing and whether or not he intends to call witnesses.

(3) If the appellant does not intend to attend or be represented at the hearing, he may send to the Registrar additional written representations in support of his appeal.

Notes

1. *The purpose of including a rule of this kind at the initial stages of the rules of procedure is to give notice to the appellant/applicant that the Registrar will be in touch with him about the hearing date. The rule may be dispensed with if there are approved forms with appropriate notes, which make the same points.*

2. *For an example of the kind of guidance which may be given, and other details of the notice of hearing, see model rule D.4–1.*

3. *The Registrar should be required to circulate written representations as with other 'pleadings', see model rule D.1–2.*

B.5–7 Representation at hearing

At the hearing of an appeal and at any pre-hearing review, the appellant may conduct his case himself (with assistance from any person if he wishes) or be represented by any person whether or not legally qualified:

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a person to assist or represent the appellant at the hearing.

1. *At present legal aid for representation is available only for proceedings before four tribunals, the Commons Commissioners, the Employment Appeal Tribunal, the Lands Tribunal and Mental Health Review Tribunals, but the Council on Tribunals welcome any steps that can be taken to make legal advice more readily available before tribunals.*

2. *On the other hand, the Council oppose restricting the right of representation to counsel or solicitors and have continually recognised the value, and sought to promote the availability, of lay representation and assistance to appellants/applicants and respondents before tribunals. However the Council recognise that there may, in certain cases, be good grounds for excluding certain persons from acting as representatives, e.g. members or staff of a tribunal with the same jurisdiction, persons who have been convicted of offences particularly relevant to a tribunal's jurisdiction (e.g. agents convicted of an offence under the Patents Act from acting in proceedings under the Design Right (Proceedings before the Comptroller) Rules 1989 (S.I. 1130), rule 6), or a person peculiarly liable to be subject to proceedings before a tribunal of comparable jurisdiction (see rule 10(1) of the Mental Health Review Tribunal Rules 1983 (S.I. 942)). Restrictions on lay representation are also recommended in paragraph 354 of the Civil Justice Review (Cm 394) in the case of "corrupt or unruly" representatives.*

3. *For an exceptional provision where the tribunal itself may appoint a representative, see rule 10(3) of the Mental Health Review Tribunal Rules 1983.*

4. *The reference in parenthesis to 'assistance from any person' is intended to refer to the practice where the appellant/applicant conducts his own case but is assisted by another who may advise him of the manner of conducting it and suggest particular issues to be explained or questions to be put.*

HEAD C: THE RESPONDENT AND THIRD PARTIES

Introductory Note

1. *As is the case with the rules set out in Head B, rules under this Head need to take account of the essential difference between an appeal to a tribunal against, or relating to, a decision of an administrative authority and an application for the adjudication of issues between party and party which Parliament has committed to a specialised tribunal rather than the courts. Public authorities may have a role in the latter case as well as the former where they are an ordinary party (e.g. as a landlord) or where they have an administrative role in relation to, or as a consequence of, a particular decision (e.g. proceedings before industrial tribunals which may involve payments out of the Redundancy Fund, where the Secretary of State has a possible interest in the decision).*

2. *The model rules under this Head, therefore, generally follow the scheme in Head B:*
   - *rules relating to respondents in appeals are to be found in model rules C.1–1 to C.1–3;*
   - *a rule relating to respondents to applications is to be found in model rule C.2–1;*
   - *a note relating to succession to respondents and respondents under a disability is to be found in part C.III;*
   - *rules relating to third parties are to be found in model rules C.4–1 to C.4–3;*
   - *and common rules capable of application to, or adoption for, all respondents are to be found in model rules C.5–1 to C.5–7.*

3. *The rules in this Head are designed principally to give effect to what the Franks Committee considered to be "the second most important requirement before the hearing [which] is that citizens should know in good time the case which they will have to meet, whether the issue to be heard by the tribunal is one between citizen and administration or between citizen and citizen". The object is to ensure that the respondent and any third party knows the nature of the appellant's/applicant's case and that all other parties know the case of the respondent and any third party. "What is needed is that the citizen should receive in good time beforehand a document setting out the main points of the opposing case" (Franks Report, paras. 71–72).*

4. *The rules in this Head, like the rules in Head B, are drafted in more detailed form than elsewhere in the compilation in order to give guidance to the unrepresented private respondent.*

C.1–1 Action by *the Authority* on receipt of a notice of appeal/statement of grounds of appeal

(1) *An Authority*[6] which receives a copy of a notice of appeal setting forth the grounds of appeal, or a separate statement of grounds of appeal, shall deliver to the Registrar a written reply acknowledging service upon it of the notice of appeal and statement of grounds of appeal and stating:–

(a) whether or not *the Authority* intends to oppose the appeal and the grounds on which it relies in opposing the appeal;

(b) the name and address [, and the profession,] of the representative of *the Authority* and whether such address is the address for service of *the Authority* for the purposes of the appeal;

(c) if in the opinion of *the Authority* any other person has a direct interest in the subject matter of the appeal, the name and address of such other person.

(2) *The Authority* shall include with its reply a statement summarising the facts relating to the disputed decision and, if they are not part of that decision, the reasons therefore [together with copies of the documents set out in Schedule = to these Rules], and shall deliver to the Registrar a sufficient number of additional copies of the reply and such other documents, to enable the Registrar to provide a copy of each of them to the appellant and any other person named by *the Authority* as having a direct interest in the subject matter of the appeal.

(3) Every such reply shall be signed by an officer of *the Authority* who is authorised to sign such documents and shall be delivered to *the appropriate office*[7] not later than twenty one days after the date on which the copy of the notice of appeal or, if received later, the copy of the separate grounds of appeal were received by *the Authority* from the Registrar.

(4) The provisions of paragraph (2) of model rule C.5–2 shall apply in relation to any document required to be included with the reply.

Notes

1. For the duty of the Registrar to serve a notice of appeal/statement on the Authority and a reply on the appellant, see rule D.1–2. If the rules provide for both a notice and a separate statement of grounds of appeal and the appellant delivers a separate statement, the time limit in this rule runs from the delivery of the separate statement.

---

[6] See para. 22(c) of the General Introduction.
[7] See para. 22(d) of the General Introduction.

C.1–1

2. Even in the case of an appeal against the decision of an Authority it may be useful to provide a common form for an acknowledgement of the notification of an appeal and a reply. It should not be necessary in the case of an administrative authority to state in the rules that forms are available; this can be notified administratively. Nor should it be necessary that any form adopted should include guidance notes as in the forms suggested for appellants or applicants, but side notes may be included at appropriate points in the form drawing attention to various rules—e.g. to model rules C.1–1 (2), C.1–2, C.5–1, and C.5–2.

3. Paragraph (2). This paragraph is designed to ensure that there is before the tribunal, and available to the appellant and third parties, sufficient material relating to the disputed decision to enable all parties to know the case they have to meet. It may be desirable to produce more than the decision and reasons themselves, in which case a requirement for a statement summarising the facts or for a list of appropriate material should be included in this rule or in a schedule: see rule 9 of, and the Schedule to, the Banking Appeal Tribunal Regulations 1987 (S.I. 1299). The production of a statement of facts, or the compilation of a schedule of documents, may, however, take time and this needs to be taken into account in deciding on the time in which a reply is to be delivered or whether a separate period is to be allowed for the delivery of such a statement or such documents. Different considerations may apply where it is desirable that appeals be heard with expedition as in immigration cases; under rules 8(2) and (4) of the Immigration Appeals (Procedure) Rules 1984 (S.I. 2041) wholly exceptional provision is made for facts to be stated orally at the hearing. For a provision where an appellant is invited to state which facts as disclosed by the Authority are disputed, see the notes to model rule B.5–3 (cf. rule 5 of the Pensions Appeal Tribunals (England and Wales) Rules 1980 (S.I. 1120)).

4. If it is a requirement of the rules relating to appeals (see model rule B.1–1) that the disputed decision should be attached to the notice of appeal, it would not be necessary to repeat that requirement in this rule.

5. Paragraph (4): In general, it should be the aim to avoid a cross reference where a rule applies directly as regards a lay applicant or respondent. Exceptions to this practice are more defensible where the rule applies, as in this case, directly as regards an administrative authority or refers to the powers or acts of the tribunal itself.

C.1–2 The respondent of record

The ..... shall be the respondent to the appeal, provided however that if, for any reason, the ..... is unlikely to be available to take an appropriate part in the proceedings, ... may appoint [a person holding office in .....] as respondent in his place.

Note

1. It will usually be the case that the Authority (i.e. the Department or other

authority concerned) will be the respondent, or principal respondent, in the proceedings. In that case, all that is necessary is a definition of respondent as in model rule I.1–5 and this model rule may be omitted.

2. *If, however, the decision-making authority is an individual, e.g. an officer in a particular service, and he is to be the respondent, a rule of this kind would be appropriate; it would be prudent to include provision to enable a substitute respondent holding a comparable office to be appointed: see rule 7 of the Immigration Appeals (Procedure) Rules 1984 (S.I. 2041).*

C.1–3 Notice that an appeal is misconceived

(1) Where *the Authority* is of the opinion that an appeal does not lie to, or cannot be entertained by, the Tribunal, it may serve a notice to that effect on the Registrar stating the grounds for such contention and applying for the appeal to be struck out.

(2) The Registrar shall send a copy of the notice and of any accompanying documents to the appellant.

(3) An application under this rule may be heard as a preliminary point of law or at the beginning of the hearing of the substantive appeal.

Note

See also model rule D.3–3 for other rules relating to preliminary issues.

PART II: THE RESPONDENT TO AN ORIGINATING APPLICATION

C.2–1 Action by respondent on receipt of originating application

(1) A person who receives a copy of an originating application [making a claim] [seeking relief] against himself (who is referred to in these Rules as "the respondent") shall deliver to the Registrar a written reply acknowledging receipt of the originating application and setting out:

(a) his full name and address;

(b) a statement whether or not he intends to resist the originating application and the grounds on which he relies in resisting it;

(c) the name and address [and the profession] of any representative of the respondent and whether the Tribunal should send notices concerning the originating application to the representative instead of to the respondent.

(2) Every such reply shall be signed by the respondent or his representative and shall be sent to or delivered at *the appropriate office* not later than twenty

C.2–1 one days after the date on which the notification of the originating application was sent to him by the Registrar.

(3) A reply which is received by the Registrar after the time appointed by this rule which contains reasons on which the respondent relies for justifying the delay shall be deemed to include an application for an extension of the time so appointed.

(4) A respondent who has not delivered a written reply shall not be entitled to take any part in the proceedings before the Tribunal on the originating application except:–

(a) to apply for an extension of time for presenting a reply;

(b) to apply for a direction that the applicant provide further particulars of his claim;

(c) to apply under rule E.1–10 for a review of the Tribunal's decision on the grounds that he did not receive notice of the originating application;

(d) to be called as a witness by another person;

(e) to be sent a copy of a decision or corrected decision.

Notes

1. *For the duty of the Registrar to serve an originating application on a respondent and a reply on the applicant, see model rule D.1–2.*

2. *A standard form of reply is, in the view of the Council on Tribunals, as appropriate in respect of private party respondents as is a standard form for private party appellants/applicants. If the standard form for reply is combined with a notification of the originating application, it would not be necessary to include in the rules themselves any indication where the form may be obtained. Notification and reply forms should contain a statement of the availability of the staff of the tribunal to assist the respondent and draw attention to the services of the Citizens Advice Bureau and other relevant local advice agencies. They should also give some indication of 'what will happen next'.*

3. *In any reply form, a reference should be made to the preliminary steps which may be available to respondents—see model rule C.5–1—and to any documents that may be required—see model rule C.5–2. As is the case with the forms suggested for appellants/applicants (see notes to model rules B.1–1 and B.2–1) it is important not to overload the form. The drafting Department or tribunal should therefore consider what matters, whether noted in model rule C.5–1 or otherwise, may most commonly be relevant to the particular jurisdiction and the extent to which it is desirable to draw them to the attention of the respondent. A preliminary step to which attention should be drawn may be the possibility of raising a preliminary legal issue. This may be particularly relevant in certain jurisdictions where a question of the competence of the applicant is likely to come into issue: see rule 6 of the Copyright Tribunal Rules 1989 (S.I. 1129). See also model rule D.3–3.*

4. *A further variant to this rule which may be considered would not require the respondent (or a third party) to state that he opposes or resists the application, but whether he intends to appear and what position he will adopt: see rule 13 of the Lands Tribunal Rules 1975 (S.I. 299) as amended.* C.4–1

PART III: SUCCESSION TO RESPONDENTS AND RESPONDENTS UNDER A DISABILITY

Note

No provision will be required as regards a disability of an administrative authority from whose decision an appeal lies and provision for the succession of one authority by another will require express statutory authority.

Where the respondent is an individual or corporation, however, it may be necessary to provide for disability or succession particularly where the tribunal and its jurisdiction has been established as an instrument of social or industrial policy. Such provision, since it may involve enforcement against a person not an original party to the proceedings, will, if not covered by the general law, require express statutory authority. See e.g. Schedule 12 to the Employment Protection (Consolidation) Act 1978.

PART IV: THIRD PARTIES

C.4–1 Action on receipt of copy of originating application or reply

(1) Any person who receives a copy of an originating application or reply naming him as a person having an interest in the originating application, or who otherwise claims a substantial interest in an originating application, may give notice to the Registrar at *the appropriate office* that he wishes to take part in the proceedings as a respondent party. He shall include in the notice:–

(a) his full name and address;

(b) a statement of his interest and whether or not he opposes the originating application, together with any grounds on which he relies in support of his interest;

(c) the name and address [,and the profession,] of any representative he appoints, and whether the Tribunal should send notices concerning the originating application to the representative instead of to himself.

(2) A person who wishes to take part in the proceedings as a respondent party shall send or deliver to the Registrar a sufficient number of additional copies of his notice to that effect to enable the Registrar to serve a copy on each of the other parties.

C.4–2 (3) A notice given under this rule shall, if such person is made a respondent party to the proceedings, be treated as his reply to the originating application.

Notes

1. *This rule applies where a third party named by a party as having an interest, or himself claiming a substantial interest, seeks to be joined in any proceedings. Rule D.1–3 sets out the duty of the Registrar to notify such a third party in certain cases that he has been so named. In such cases, it may be convenient to provide with such notification an approved form of notice for the purposes of this rule. For the power of the tribunal to join such a person as a party, see model rule C.4–2.*

2. *It may be appropriate in certain cases to differentiate the third party from the original respondent e.g. by referring to him as a third party or intervener and to a notice of intervention. In that event, an appropriate amendment should be made to the definition of 'party', and care taken to ensure that the terms of rules referring to 'pleadings' such as model rule D.1–2 are wide enough to cover such a 'notice of intervention'.*

C.4–2 Addition of new parties to the proceedings

If it appears to the Tribunal, whether on the application of a party or otherwise, that it is desirable that any person be made a party to the proceedings, the Tribunal may order such person to be joined as a respondent and may give such directions relating thereto as may be just, including directions as to the delivery and service of documents.

Note

The decision whether a third party should be joined to the proceedings is, under this rule, a matter for the tribunal.

C.4–3 Authority with interest entitled to be heard on an originating application

When [*set out connection between an authority and the application*], *the Authority* shall be entitled to be heard in the proceedings on the originating application, [and shall be joined to the proceedings as a respondent except for the purposes of rule C.2–1(4) (consequences of failure to enter a reply) or rule F.1–1 (costs)].

Notes

1. *This exceptional provision may be applicable where a particular enabling Act contemplates some act by an authority which is incidental to the principal jurisdiction of the tribunal or where the authority has an interest in the exercise of such jurisdiction even though relief may not be directly claimed against that authority. For example see rule 6 (2) and 7 (5) of the Industrial Tribunals (Rules of Procedure) Regulations 1985 (S.I. 16): where payments*

may fall on the Redundancy Fund or Maternity Pay Fund, the Secretary of State is entitled to appear as if he were a party. In Jones v Secretary of State for Employment *[1982] ICR 389, the EAT decided that as regards claims for redundancy payments, the Secretary of State could be a sole respondent.*

2. *For a different kind of interest, see rule 7(3) of the Immigration Appeals (Procedure) Rules, 1984 (S.I. 2041) which entitles the Representative of the U.N. High Commissioner for Refugees to be treated as a party to an appeal if any other party is or claims to be a refugee within the High Commissioner's competence.*

PART V: PROVISIONS RELATING TO ALL RESPONDENTS AND THIRD PARTIES

C.5–1 Additional matters which may be included in replies by respondents

A respondent may include in his reply or in a separate notice to the Tribunal:–

[(a) a request for further particulars of the originating application or of any reply by another respondent or any matter stated therein;]

[(b) a request for a determination of any question as a preliminary issue;]

[(c) a request for an early hearing of the originating application or of any question arising out of the originating application, and the reasons for the request for an early hearing;]

[(d) [a request for an oral hearing] [a statement that the Tribunal may proceed to decide the originating application without an oral hearing];]

[(e) a notification that at the hearing of the originating application, he intends to call [an expert witness or expert witnesses and the name and address of the proposed witness or witnesses].]

Notes

1. *This model makes similar provisions for respondents to those contained in model rule B.5–1 as respects appellants/applicants. See notes to that model rule.*

2. *Such provision as is made here needs to be referred to in any form approved as a reply to an appeal or originating application.*

3. *For preliminary issues, see also model rule C.2–1, note 3 and model rule D.3–3.*

C.5–2 Additional documents and other material to accompany reply

(1) A respondent (including a person wishing to be made an additional party to the proceedings as a respondent) shall send or deliver to the Registrar with

C.5–3 his reply a copy of every [map, plan, certificate, report or other document] on which he intends to rely at the hearing of the appeal together with a sufficient number of additional copies of each of them to enable the Registrar to provide a copy to each of the other parties to the proceedings:

Provided that the Tribunal may, on such terms as it thinks fit, excuse a respondent from providing any [map, plan, certificate, report or other document] required to be furnished under this rule where the [map, plan, certificate, report or document] or a copy is already in the possession of the Tribunal or some other party so that to require it to be provided at this stage would be unreasonable on the grounds of expense or otherwise.

(2) If any [map, plan, certificate, report or other document] referred to in paragraph (1) contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence, or considerations of national security are involved, and for that reason the respondent seeks to restrict its disclosure, he shall inform the Registrar of that fact and of his reasons for seeking such a restriction. In any such case, the Registrar shall serve the copies as provided in this rule only in accordance with the directions of the Tribunal.

Note

See also the comparable provision as regards appellants/applicants in model rule B.5–2 and the notes to that rule. On questions of confidentiality and private hearings, see model rules D.2–3 and E.1–2.

C.5–3 Amendment of replies and delivery of supplementary statement by way of reply

(1) A respondent may at any time before he is notified of the date of the hearing of the appeal amend his reply or deliver a supplementary statement by way of reply.

(2) A respondent may amend any reply or supplementary statement with the leave of the Tribunal at any time after he has been notified of the date of the hearing of the appeal or at the hearing itself. The Tribunal may grant such leave on such terms as it thinks fit, including the payment of costs or expenses.

(3) The respondent shall send a copy of every amendment and supplementary statement to the Registrar.

Note

See notes to model rule B.5–3.

C.5–4 Failure to reply and absence of opposition

If no reply is received by the Registrar within the time appointed by rule [C.1–1] [C.2–1] or any extension of time allowed by the Tribunal, or if the respondent states in writing that he does not resist the appeal, or withdraws his opposition to the appeal, and in any such case there is no other opposition to the appeal, the Tribunal may determine the appeal on the basis of the notice and grounds of appeal without a hearing.

Notes

1. *Such a provision would simplify and expedite the determination of uncontested appeals/applications. Although any such determination would be subject to review in accordance with model rule E.1–10, it would be desirable to give warning of the effect of this rule at an early stage—e.g. on the notes to any approved form for reply.*

2. *The withdrawal of opposition does not dispense with the need of the appellant/applicant to satisfy the tribunal, at least where there is an element of public interest, that he is entitled to the relief sought:* Re: West Anstey Common *[1985] Ch 329; [1985] 1 All ER 618, CA.*

3. *In considering the consequences of withdrawal (or consent to an appeal/application), it is necessary to have regard to the interests of third parties:* Ellesmere Port etc v Shell UK Ltd *[1980] 1 WLR 205; [1980] 1 All ER 383, CA.*

C.5–5 Application for directions

A respondent may apply to the Tribunal to give directions as to any matter relating to the hearing of the appeal. Unless made during a pre-hearing review, an application for directions shall be made in writing to the Registrar at *the appropriate office* [with sufficient copies to enable the Registrar to serve a copy on each of the other parties].

Note

For the powers of a tribunal on such an application, see Head D, Part II.

C.5–6 Action by respondent on receipt of notice of hearing

(1) The Registrar will serve on a respondent who opposes the appeal a notice informing him of the time and place of any oral hearing which is to be held which, unless the parties otherwise agree, shall not be earlier than twenty one days after the date on which the notice is sent. Such notice will include, in a form approved by [the President of] the Tribunal, guidance regarding the rules of evidence and procedure which apply to the hearing.

(2) When he receives the notice of the time and place of hearing, the respondent

C.5–7 shall inform the Tribunal whether or not he intends to attend or be represented at the hearing, and whether or not he intends to call witnesses.

(3) If the respondent does not intend to attend or be represented at the hearing, he may send to the Registrar additional written representations in support of his reply.

Note

See notes to model rule B.5–6.

C.5–7 Representation at hearing

At the hearing of an appeal and at any pre-hearing review, *the Authority* may be represented by counsel or a solicitor or by an official of the ..... Department.

[*Alternative*]

At the hearing of an originating application and at any pre-hearing review, the respondent, if an individual, may conduct his case himself (with assistance from any person if he wishes) and any respondent may be represented by any person whether or not legally qualified:

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent the respondent at the hearing.

Notes

1. *The first alternative is intended for appeals or other proceedings against an Authority; the second alternative is intended for originating applications against other legal or natural persons.*

2. *See also notes to model rule B.5–7.*

APPENDIX TO HEADS B AND C

EXPLANATORY NOTE

THE PROVISIONS IN THIS APPENDIX RELATE TO BOTH APPELLANTS/APPLICANTS AND RESPONDENTS AND ARE FOR USE AS AN ALTERNATIVE TO THE SEPARATE PROVISIONS OF HEAD B. PART V AND HEAD C. PART V.

B/C.1 Additional matters which may be included in a notice of appeal or reply.

(1) The appellant may include in his notice of appeal or in a separate notice to the Tribunal:–

[(a) a request that the disputed decision shall be suspended until a decision has been given on the appeal [*or other interim relief*];]

(b) any request or notification specified in paragraph (2) of this rule.

(2) The appellant or a respondent (each of which is included in the expression "a party") may include in his notice of appeal, statement of grounds of appeal or reply, or in a separate notice to the Tribunal, as appropriate:–

[(a) a request for further particulars of a notice of appeal, statement of grounds of appeal, reply, supplementary statement or written representation;]

[(b) a request for a determination of any question as a preliminary issue;]

[(c) a request for an early hearing of the appeal or of any question arising out of the appeal, and the reasons for the request for an early hearing;]

[(d) [a request for an oral hearing] [a statement that the Tribunal may proceed to decide the appeal without an oral hearing];]

[(e) a notification that at the hearing of the appeal he intends to call [an expert witness or expert witnesses and the name and address of the proposed witness or witnesses];]

[(f) a request that an expert who was concerned in the taking of the disputed decision shall attend the hearing of the appeal and give evidence].

Notes

1. *There may well be preliminary points which the appellant/applicant or respondent wishes to be brought to the attention of the tribunal at an early stage, e.g. a request by an appellant for the suspension of a disputed decision. The tribunal itself may wish for early notice of such matters or of the intentions of the parties as to evidence. Where a tribunal has a discretion not to hold an oral hearing, this should be explained to appellants so that they can have an opportunity of explaining why they need an oral hearing. These and a number of other preliminary or evidentiary points are set out in this model rule. It should be borne in mind, however, that some of these matters may only be included if the enabling Act provides for them expressly (e.g. the power to suspend an administrative decision or to grant other interim relief). For this, see notes to model rule D.3–1.*

2. *If an appeal/application or reply form is used, the relevant provision(s) or requirement(s) may be included in the form—regard being had to the desirability of not overloading the form—see note 3 to model rule B.1–1. Even where forms are provided, a separate rule such as this, with the relevant selection of preliminary points, will be required.*

3. *An alternative means of inviting applications such as those set out in this rule would be on the Registrar's acknowledgement of the notice of appeal or notification of the respondent: see rules D.1–1, C.1–1 and C.2–1.*

B/C.2 Documents and other material to accompany appeal or reply

(1) A party (including a person wishing to be made an additional party to the proceedings as a respondent) shall send or deliver to the Registrar with his appeal or reply, as the case may be, a copy of every [map, plan, certificate, report or other document] on which he intends to rely for the purposes of his appeal or reply, together with a sufficient number of additional copies of each of them to enable the Registrar to provide a copy to each of the other parties to the proceedings:

> Provided that the Tribunal may, on such terms as it thinks fit, excuse a party from providing any [map, plan, certificate, report or other document] required to be furnished under this rule where the [map, plan, certificate, report or document] or a copy is already in the possession of the Tribunal or some other party so that to require it to be provided at this stage would be unreasonable on the grounds of expense or otherwise.

(2) If any [map, plan, certificate, report or other document] on which a party relies contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence, or considerations of national security are involved, and for that reason the party seeks to restrict its disclosure, he shall inform the Registrar of that fact and of his reasons for seeking such a restriction. In any such case, the Registrar shall serve the copies as provided in this rule only in accordance with the directions of the Tribunal.

Notes

1. *This rule deals with two matters—the provision of documentary evidence to support an appeal/application or reply and the steps open to a party to protect confidentiality and national security.*

2. *In certain cases the tribunal may need a particular description of document in order properly to perform its function. Since what is required is evidence, and not a 'pleading', the Council take the view that copies for parties should be provided by the party and not by the Registrar, though the Registrar will be responsible for distributing them.*

3. *An unqualified requirement for a particular description of document might operate harshly, hence the proviso to paragraph (1). It might also involve unnecessary disclosure of confidential material, hence paragraph (2). If an approved form is used, the relevant requirement under paragraph (1) should be included in the form—with appropriate explanatory notes covering the proviso and paragraph (2).*

4. *Further provisions relating to confidentiality and national security are set out in model rule D.2–3; see particularly paragraph (3).*

B/C.3 Amendment of appeal or reply and delivery of supplementary grounds of appeal or reply

(1) A party may, at any time before he is notified of the date of the hearing of the appeal, amend his notice of appeal, any statement of grounds of appeal or reply, or deliver a supplementary statement of grounds of appeal or reply.

(2) A party may amend any notice of appeal, statement of grounds of appeal or reply with the leave of the Tribunal at any time after he has been notified of the date of the hearing of the appeal or at the hearing itself. The Tribunal may grant such leave on such terms as it thinks fit, including the payment of costs or expenses.

(3) A party shall send a copy of every amendment and supplementary statement made by it to the Registrar.

Notes

1. A party's power to amend and deliver a supplementary statement, together with the tribunal's powers (model rule D.2–2) to permit any party to make further statements, make it unnecessary to provide expressly for a rejoinder to the respondent's reply.

2. See also note 2 to model rule B.5–3.

B/C.4 Withdrawal of appeal

(1) The appellant may–

(a) at any time before the hearing of the appeal withdraw his appeal by sending to *the appropriate office* a notice stating he withdraws his appeal signed by him or his representative;

(b) at the hearing of the appeal, with the leave of the Tribunal, withdraw his appeal.

[(2) Where an appeal is withdrawn, a fresh appeal may not be brought in relation to the same disputed decision except with the leave of the Tribunal.]

Notes

1. Paragraph (2) restricts the right of appeal. It would require a rule-making power in the enabling Act which goes beyond a power to regulate practice and procedure, e.g. a power to regulate the exercise of the right of appeal, cf. paragraph 4 of Schedule 3 to the Data Protection Act 1984.

2. Where reference is made in any form to the withdrawal of an appeal, care should be taken to ensure that it is not in such terms as appear to urge the appellant to withdraw.

B/C.5 Failure to reply and absence of opposition

If no reply is received by the Registrar within the time appointed by rule [C.1–1] [C.2–1] or any extension of time allowed by the Tribunal, or if the respondent states in writing that he does not resist the appeal, or withdraws his opposition to the appeal, and in any such case there is no other opposition to the appeal, the Tribunal may determine the appeal on the basis of the notice and grounds of appeal without an oral hearing.

Notes

1. *Such a provision would simplify and expedite the determination of uncontested appeals/applications. Although any such determination would be subject to review in accordance with model rule E.1–10, it would be desirable to give warning of such a procedure at an early stage—i.e. in the notes to any approved form for reply.*

2. *The withdrawal of opposition does not dispense with the need of the appellant/applicant to satisfy the tribunal, at least where there is an element of public interest, that he is entitled to the relief sought:* Re: West Anstey Common *[1985] Ch 329; [1985] 1 All ER 618, CA.*

3. *In considering the consequences of withdrawal (or consent to an appeal/application), it is necessary to have regard to the interests of third parties:* Ellesmere Port etc v Shell UK Ltd *[1980] 1 WLR 205; [1980] 1 All ER 383, CA.*

B/C.6 Application for directions

A party may apply to the Tribunal to give directions as to any matter relating to the hearing of the appeal. Unless made during a pre-hearing review, an application for directions shall be made in writing to the Registrar at *the appropriate office* [with sufficient copies to enable the Registrar to serve a copy on each of the other parties].

Notes

For the powers of a tribunal on such an application, see Head D, Part II.

B/C.7 Action of party on receipt of notice of hearing

(1) The Registrar will serve on the appellant and any respondent who opposes the appeal a notice informing them of the time and place of any oral hearing which is to be held which, unless the parties otherwise agree, shall not be earlier than twenty one days after the date on which the notice is sent. Such notice will include, in a form approved by [the President of] the Tribunal, guidance regarding the rules of evidence and procedure which apply to the hearing.

(2) When he receives the notice of the time and place of hearing, each party shall inform the Tribunal whether or not he intends to attend or be represented at the hearing, and whether he intends to call witnesses.

(3) If a party does not intend to attend or be represented at the hearing, he may send to the Registrar additional written representations in support of his case.

Notes

1. *The purpose of including a rule of this kind at the initial stages of the rules of procedure is to give notice to the parties that the Registrar will be in touch with them about the hearing date. The rule may be dispensed with if there are approved forms with appropriate notes, which make the same points.*

2. *For an example of the kind of guidance which may be given, and other details of the notice of hearing, see notes to model rule D.4–1.*

3. *The Registrar should be required to circulate written representations as with other 'pleadings': see model rule D.1–2.*

B/C.8 Representation at hearing

At the hearing of an appeal and at any pre-hearing review [a party] [the appellant] may conduct his case himself (with assistance from any person if he wishes) or may be represented by any person whether or not legally qualified:

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent a party at the hearing.

[*Additional provision where the respondent is an administrative authority.*] At the hearing of an appeal and at any pre-hearing review *the Authority* may be represented by counsel or a solicitor or by an official of the ..... Department.

Notes

1. *At present legal aid for representation is available only for proceedings before four tribunals, the Commons Commissioners, the Employment Appeal Tribunal, the Lands Tribunal and Mental Health Review Tribunals, but the Council on Tribunals welcome any steps that can be taken to make legal advice more readily available before tribunals.*

2. *On the other hand, the Council oppose restricting the right of representation of appellants (or lay respondents) to counsel or solicitors and have continually recognised the value, and sought to promote the availability, of lay representation and assistance to appellants/applicants and respondents before tribunals. However, the Council recognise that there may, in certain cases, be good grounds for excluding lay representation, e.g. by members of staff of a tribunal with the same jurisdiction, by persons who have been*

B/C.8 *convicted of offences particularly relevant to a tribunal's jurisdiction (e.g. agents convicted of an offence under the Patents Acts from acting in proceedings under the Design Right (Proceedings before the Comptroller) Rules 1989 (S.I. 1130)), or a person peculiarly liable to be subject to proceedings before a tribunal of comparable jurisdiction (see rule 10(1) of the Mental Health Review Tribunal Rules 1983 (S.I. 942)). Restrictions on lay representation are also recommended in paragraph 354 of the Civil Justice Review (Cm 394) in the case of 'corrupt or unruly' representatives.*

3. *For an exceptional provision where the tribunal itself may appoint a representative, see rule 10(3) of the Mental Health Review Tribunal Rules 1983 (S.I. 942).*

4. *The reference in parenthesis to 'assistance from any person' is intended to refer to the practice where a party conducts his own case but is assisted by another who may advise him of the manner of conducting it and suggest particular issues to be explained or questions to be put.*

[END OF APPENDIX TO HEADS B AND C]

PART I: ACTION BY REGISTRAR ON RECEIPT OF NOTICE OF APPEAL/ORIGINATING APPLICATION AND REPLIES

D.1–1 Acknowledgement and registration of appeal

(1) Upon receiving a notice of appeal the Registrar shall:–

(a) send an acknowledgement of its receipt to the appellant; and

(b) enter particulars of it in the register and shall inform the parties in writing of the case number of the appeal entered in the register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Tribunal shall be sent.

(2) The acknowledgement of receipt of the notice of appeal shall include a notification that advice in relation to the proceedings may be obtained from the officers of the Tribunal or Citizens Advice Bureau [and, if the Tribunal has a discretion not to hold an oral hearing of a contested appeal, a statement that, if the appellant seeks such a hearing, he must immediately apply for one, stating his reasons for seeking it].

Notes

1. *An acknowledgement of a notice of appeal or originating application is the first official response to the appellant/applicant and may indeed be the first occasion on which official advice may be offered to him. It would therefore be a most suitable occasion to give effect to the Franks Committee suggestion (Report, para. 67) that "it would be helpful if official forms and leaflets concerning matters which might be the subject of a tribunal hearing were to contain a notice drawing attention to the facilities provided by the Citizens' Advice Bureau Service—on the lines of what is now done in a County Court summons form". Such a notification may not, however, be necessary where an approved form for appeals or originating applications is used which contains such a reference. In the absence of an approved form, consideration should also be given to including in the acknowledgement of notice of appeal etc. a note of 'what happens next.'*

2. *The Council also suggest that administrative provision be made to include with letters of acknowledgement lists of local advice agencies and local law centres. Consideration should also be given to the inclusion, with letters of acknowledgement and notifications to respondents, of notes on the rules of procedure and evidence of the kind referred to in the notes to model rule D.4–1 as an alternative to including them with the notice of hearing.*

3. *The recommendations of the Civil Justice Review (Cm 394) are also pertinent*

in this connection. In addition to making a similar suggestion to that referred to in note 2 above, the Review makes a recommendation (para. 363) with regard to advice by court staff that is equally applicable to tribunal staff:

> *"Individual litigants with cases involving small amounts should not be expected to incur the cost of seeking legal advice where this is likely to exceed or be disproportionate to the amount at stake. Their primary source of information and guidance is the staff of the court, who should be able to advise any litigant on the remedies open to him in relation to a particular claim, the procedure for pursuing those remedies and the precise manner in which court forms should be completed. Provided the staff are prepared to assist any litigant on request there can be no basis for any fear or accusation of partiality."*

4. *For the reference in paragraph (2) to an oral hearing, see note 1 to rule B.5–1.*

5. *Documents relating to tribunal proceedings should be clearly designated as documents of the tribunal and not of the Government Department concerned and should come from the tribunal and not from the Department (Franks Report, para. 73). Tribunals, and tribunals with the same jurisdiction, should endeavour to maintain uniformity in each kind of form they issue. Administrative arrangements should be made so that all forms are approved by the President, the Chairman or, in the case of an ad hoc tribunal, the Department.*

D.1–2 Service of documents by Registrar

(1) The Registrar shall forthwith serve a copy of a notice of appeal and a separate statement of grounds of appeal and of any reply, together with any amendments or supplementary statement, written representations or other documents received from a party on all the other parties to the proceedings and, if any person or authority is subsequently joined as a party, upon that person or authority:

> Provided that if any such matter is sent or delivered to the Registrar after the time prescribed by these Rules, the Registrar shall defer the service of such copies pending a decision by the Tribunal for the extension of the time limit.

(2) The Registrar shall serve with any copy of an originating application such information as is appropriate to the case about the means and time of delivering a reply, the consequences of failure to do so, the right to receive a copy of the decision, and the availability of advice in relation to the application from the offices of the Tribunal and the Citizens Advice Bureau.

Notes

1. *Paragraph (2) of this model rule is drafted in terms of an originating application. There should be no need for an equivalent provision in the case of an appeal where the respondent is an administrative authority.*

2. *For service on third parties, see model rule D.1–3.*

D.1–3 Notification to third parties

Upon receiving a notice of appeal or separate statement of grounds of appeal or of a reply in which any person other than the appellant or respondent is named as [having a direct interest] [having participated in proceedings before *the Authority* which led to the disputed decision], the Registrar shall immediately send to such person copies of the notice [and statement of grounds] of appeal and reply, together with such information as is appropriate to the case about the method of such other person applying to be made a party to the proceedings as a respondent and delivering a reply, and the availability of advice in relation to the appeal from the offices of the Tribunal and the Citizens Advice Bureau.

D.1–4 Notification to the office responsible for appointing members of an ad hoc Tribunal

Upon receiving a notice of appeal, the Registrar shall forthwith request [*the relevant appointing authority/authorities*] to appoint [respectively] the Chairman and other members of the Tribunal to hear the appeal.

Notes

1. *This model rule is necessary where there is no continuing tribunal in being but a tribunal has to be constituted, generally from an existing panel or separate panels of persons qualified as Chairmen or other members, for a particular appeal: see, e.g. reg. 6 of the Banking Appeal Tribunal Regulations 1987 (S.I. 1299).*

2. *For ad hoc tribunals, see also model rule H.2–1.*

D.1–5 Notification of conciliation machinery

[*In any case where statutory provision is made for conciliation*] the Registrar shall notify the parties that the services of a conciliation officer are available to them.

Note

In addition to statutory provisions for conciliation, there may be informal procedures available for the resolution of disputes without proceeding to a hearing such as exist under the complaints procedures of the Family Health Service Authorities. It is for consideration whether rules of procedure should contain a rule requiring the Registrar to draw attention to the availability of such procedures.

D.1–6 Public notice of originating application

(1) Upon receiving an originating application, the Tribunal shall decide what

D.1–7 notices are to be given, whether by advertisement or otherwise, to persons who appear to have a [direct or financial] interest in the proceedings and may for this purpose require the applicant to provide any information which it is within his power to provide.

(2) The applicant shall give such notices as may be directed by the Tribunal under this rule and shall notify the Registrar in writing when he has done so.

Note

A rule to this effect may be necessary if an application may affect the interest of third persons, e.g. contiguous landowners or the amenities of the neighbourhood: see for example rule 20 of the Lands Tribunal Rules 1975 (S.I. 299) as amended, which relates to applications for relief from restrictive covenants affecting land. It would be appropriate to provide a sanction as in rule D.2–11.

D.1–7 Notice that originating application is misconceived

(1) Where the Registrar is of the opinion that an originating application does not seek, or on the facts stated therein cannot entitle the applicant to, relief which the Tribunal has power to give, he may give notice to that effect to the applicant stating the reasons for his opinion and informing him that the application will not be registered unless he states in writing that he wishes to proceed with it.

(2) Where a notice is given under this rule, the originating application shall [(save as regards any provision relating to the time at which applications are receivable)] be treated as not having been received by the Registrar, and it shall not be registered under rule D.1–1, unless the applicant informs the Registrar in writing that he wishes to proceed with it.

Note

1. *The purpose of this rule is to limit the time taken to deal with obviously misconceived applications. It is designed to give the applicant an opportunity to think again about proceeding, but the rule itself provides no sanction against his proceeding if he wishes to do so. A sanction in costs would be available under model rule F.1–1(1)(a) if the tribunal subsequently came to the conclusion that the applicant had acted frivolously, vexatiously or unreasonably.*

2. *Cf. model rule C.1–3 where the Authority against whose decision an appeal is brought may make a similar contention and seek an early decision on a point of law.*

3. *If there is a time limit for the bringing of applications, it will be desirable, if not necessary, to include the passage in parenthesis in paragraph (2).*

Introductory Note

Two preliminary questions need to be considered:–

(a) whether interlocutory proceedings may be heard in Chambers, i.e. not in public;

(b) whether interlocutory proceedings may be heard ex parte.

As to (a), it would be better to avoid having to rely on the somewhat circuitous route for avoiding a public hearing which was followed in Jones v Enham Industries *[1983] ICR 580, EAT, but instead to exclude interlocutory proceedings from the scope of model rule E.1–2, by confining that rule to oral hearings and defining hearing and decision to exclude interlocutory proceedings: see model rule I.1–5.*

As to (b), the solution adopted in model rule D.2–1 is to require the tribunal to serve an application for an interlocutory order on the other parties, who may then object to the making of the order. The tribunal may, if it considers it necessary, give the parties an opportunity of appearing before it on the application.

D.2–1 Directions in preparation for a hearing

(1) The Tribunal may at any time, on the application of a party or of its own motion, give such directions (including the issue of a witness summons or the making of an order for entry on land) as are provided in this Part of these Rules to enable the parties to prepare for the hearing or to assist the Tribunal to determine the issues. The Registrar may exercise the powers of the Tribunal on an application under paragraph (2) of this rule in the same cases, and subject to the same conditions, as are provided in paragraphs (3)(a) and (4) of rule D.3–2.

(2) An application by a party for directions (otherwise than during a pre-hearing review or a hearing) shall be made in writing to the Registrar and, unless it is accompanied by the written consent of all the parties, shall be served by the Registrar on any other party who might be affected by such directions. If any such other party objects to the directions sought, the Tribunal shall consider the objection and, if it considers it necessary for the determination of the application, shall give the parties an opportunity of appearing before it.

(3) Directions containing a requirement under this Part of these Rules shall, as appropriate:–

(a) include a statement of the possible consequences for the appeal, as provided by rule D.2–11, of a party's failure to comply with the requirement within the time allowed by the Tribunal;

(b) contain a reference to the fact that under [section ..... of the Act]

D.2–2

[rule .....] any person who without reasonable excuse fails to comply with the directions shall be liable on summary conviction to a fine not exceeding the ..... level on the standard scale.

Notes

1. *For pre-hearing review, see model rule D.3–2.*

2. *Provision for a penal sanction may only be included if there is express authority in the enabling Act.*

3. *As regards empowering the Registrar to exercise the functions of the tribunal under this rule, see notes 2 and 3 to model rule H.3–4.*

D.2–2 Particulars and supplementary statements

The Tribunal may give directions requiring any party to provide such particulars or supplementary statements as may be reasonably required for the determination of the appeal.

Notes

1. *There should be clear provision in procedural rules enabling a tribunal to order further particulars to be given where this is necessary in fairness to any party.*

2. *In* Honeyrose Products v Joslin *[1981] ICR 317, EAT, quoting the authority of* International Computers Limited v Whitley *[1978] IRLR 318, EAT, it was stated that "it would be most unfortunate if it became the general practice for employers to make applications for further and better particulars when the nature of the employee's case is stated with reasonable clarity."*

3. *As regards particulars concerning compensation, see* Colonial Mutual Life Assurance Society Ltd v Clinch *[1981] ICR 752, EAT.*

4. *For a provision where the tribunal itself seeks further information under a penal sanction, see paragraph 7 of Schedule 11 to the Rent Act 1977.*

D.2–3 Discovery and inspection of documents and other material

(1) Subject to paragraphs (2) and (3) of this rule, the Tribunal may give directions:–

(a) requiring a party to deliver to the Tribunal any document or other material which the Tribunal may require and which it is in the power of that party to deliver, and the Tribunal shall make such provision as it thinks necessary to supply copies of any document obtained under this rule to the other parties to the proceedings;

(b) granting to a party the right to inspect and take copies of any document

or other material which it is in the power of a party to disclose, and appointing the time at or within which and the place at which any such act is to be done.

It shall be a condition of the supply of any information or material under this rule that a party shall use the document or material supplied only for the purpose of the appeal.

(2) Paragraph (1) does not apply in relation to any document or other material which the party could not be compelled to produce on the trial of an action in a court of law in that part of the United Kingdom where the appeal is to be determined.

(3) In giving effect to this rule, the Tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

Notes

1. *This rule is concerned with two separate but connected questions:–*

   (a) the ability of the Tribunal to obtain information: paragraph (1)(a);

   (b) the right of a party to inspect and take copies of documents: paragraph (1)(b).

   Paragraphs (2) and (3) are relevant to both questions. In cases where it may be considered to put too great a strain on the unrepresented lay party to make provision for his inspecting and copying an opponent's documents (as in paragraph (1)(b)), it may be desirable to omit sub-paragraph (b) and to rely on sub-paragraph (a).

2. *Specific provision should be made for discovery. "In the absence of any formal order for discovery, there is no general duty on a party [to proceedings before an industrial tribunal] to disclose any of the documents in his possession, but no document should be withheld if the effect of non-disclosure would be to mislead another party as to the true meaning of any document which has been voluntarily disclosed . . ." (headnote to)* Birds Eye Walls Ltd v Harrison *[1985] ICR 278, EAT. However a witness may be required to produce documents at the hearing pursuant to a witness summons under model rule D.2–4 notwithstanding the absence of directions under model rule D.2–3.*

3. *As regards discovery of confidential documents, "relevance alone, though a necessary ingredient, did not provide an automatic test for ordering discovery, the ultimate test being whether discovery was necessary for disposing fairly of the proceedings and, in order to decide whether it was necessary, the tribunal should inspect the documents, considering whether special reasons [sic] such as 'covering up' or hearing in camera should be adopted". See* Science Research Council v Nasse *[1980] AC 1028; [1979] ICR 921, HL;* British Railways Board v Natarajan *[1979] 2 All ER 794; [1979] ICR 326, EAT;* Williams v Dyfed C.C. and Ors *[1986] ICR 449, EAT.*

D.2–3 *4. Alternative provisions which may be considered relating to documentary evidence and inspection are as follows:–*

A. Automatic disclosure and inspection

"(1) The Authority shall within ..... days of delivering its reply, provide the appellant with a list of the documents on which it proposes to rely at any hearing and the appellant shall within ..... days of receipt of such a list provide a similar list to the Authority. Copies of such lists shall be delivered to the Registrar.

(2) A list under paragraph (1) shall specify a reasonable period during which, and a reasonable place at which, the other party may inspect and take copies of the documents contained in the list.

(3) A party shall be entitled to inspect and take copies of any document set out in the list of documents served by the other party during the period and at the place specified by such other party in his list of documents or during such period and at such place as the Tribunal may direct.

(4) Unless the Tribunal otherwise directs, a party shall produce any document set out in his list of documents at the hearing of the case when called upon to do so by the other party."

Such a provision, however, is probably only suitable for proceedings of a more sophisticated nature.

B. Documents relating to the proceedings before the administrative authority from whom the appeal lies

"(1) The Tribunal shall take all reasonable steps to ensure that there is supplied to each of the parties a copy of, or sufficient extracts from or particulars of, any document relevant to the proceedings which has been received from the Authority or from a party (other than a document which is in the possession of such a party, or of which he has previously been supplied with a copy by the Authority).

(2) Where at any hearing–

(i) any document relevant to the appeal is not in the possession of a party present at that hearing; and

(ii) that party has not been supplied with a copy of, or sufficient extracts from or particulars of, that document by the Authority in accordance with the provisions of paragraph (1) of this rule, then unless:–

(a) that party consents to the continuation of the hearing; or

(b) the Tribunal considers that that party has a sufficient opportunity of dealing with that document without an adjournment of the hearing,

the Tribunal shall adjourn the hearing for a period which it considers will afford that party a sufficient opportunity of dealing with that document."

5. Paragraph (3): see also model rule B.5–2. A particular point to which the Council have drawn attention in the past is that where confidential

information has been obtained by the use of compulsory powers, the information should be supplied to others only after consultation with the person who supplied the information.

6. *A matter which may give rise to difficulty is where it is sought to withhold relevant medical evidence from a party (generally the appellant/applicant or a mental health patient) on the ground that it would adversely affect his health or welfare. The issue can arise on a general rule governing discovery* (Department of Health and Social Security v Sloan *[1981] ICR 313 EAT), but specific provisions may also be included to deal with this question (rule 22 of the Pensions Appeal Tribunals (England and Wales) Rules 1980 (S.I. 1120) and rule 12 of the Mental Health Review Tribunal Rules 1983 (S.I. 942)). However well intentioned the objection to disclosure on health or welfare grounds, the withholding of relevant information from a party will give rise to an issue of a breach of the rules of natural justice. That question, so far as it affects Article 6.1 of the European Convention on Human Rights, has been briefly examined by the European Court of Human Rights in* Feldbrugge v the Netherlands *(Judgements of the Court, Series A, vol. 99). In that case, the applicant submitted:*

> *"that she had been denied a "fair hearing" before the President of the Appeals Board. In this connection, she alleged a twofold violation of the principle of equality of arms with the Occupational Association. In the first place she had not had the opportunity of appearing—either in person or represented by a lawyer—to argue her case. Secondly, the reports of the two permanent medical experts had not been made available to her...., with the result that she had not been able either to comment on them or, if thought necessary, to call for a counterexpertise; yet in practice these documents provided the President of the Appeals Board with the sole basis for his decision."*

The Court took the view that:

> *"the procedure followed before the President of the Appeals Board by virtue of the Netherlands legislation was clearly not such as to allow proper participation of the contending parties, at any rate during the final and decisive stage of that procedure. To begin with, the President neither heard the applicant nor asked her to file written pleadings.* ***Secondly, he did not afford her or her representative the opportunity to consult the evidence in the case-file, in particular the two reports—which were the basis of the decision—drawn up by the permanent experts, and to formulate her objections thereto*** *[emphasis supplied]. Whilst the experts admittedly examined Mrs. Feldbrugge and gave her the opportunity to formulate any comments she might have had, the resultant failing was not thereby cured. In short, the proceedings conducted before the President of the Appeals Board were not attended, to a sufficient degree, by one of the principal guarantees of a judicial procedure."*

On this basis the Court held there was a violation of Article 6.1.

7. *Note 9 below sets out a specific model rule dealing with the withholding of medical evidence. It departs from the precedents (which allow such withheld*

evidence to be taken into account) in that it requires that it may only be taken into account if there has been disclosure to a representative of the appellant/applicant or a person specifically appointed to safeguard his interests. For the kind of condition which may be appropriate to limit use and disclosure, see rule 12 of the Mental Health Review Tribunal Rules 1983 (S.I. 942). It is desirable to ensure that there is adequate statutory provision for a penal sanction for a breach of such a condition.

8. *A consequential problem may arise when the decision is given if the tribunal considers that the full disclosure of the recorded reasons for the decision would adversely affect the health or interests of the relevant person: see rule 24(2) of the Mental Health Review Tribunal Rules 1983.*

9. *The model rule is as follows–*

"(1) Where, in connection with the consideration and determination of any matter by the Tribunal, it is sought to withhold from [the appellant] [a person who is the subject of the reference to the Tribunal] any relevant medical advice or medical evidence or other document relating to [the appellant] [that person] on the grounds that it would adversely affect his health or welfare to disclose it to him, the Tribunal may, if it is satisfied that such disclosure would adversely affect the health or welfare of [the appellant] [that person], decide not to diclose to him such advice, evidence or other document. Any such decision shall be recorded in writing.

(2) Where the Tribunal decides that any such advice, evidence or other document shall not be disclosed to [the appellant] [any such person], the Tribunal shall not take such advice, evidence or other document into account for the purpose of its determination of the appeal unless it has been disclosed to a representative of [the appellant] [person concerned] or to a person appointed by the Tribunal to represent the interests of the [appellant] [person concerned] in that regard. In making disclosure to such a representative, the Tribunal may impose such conditions as regards the use or further disclosure of the advice, evidence or document as it thinks fit."

D.2–4 Summoning of witnesses

(1) The Tribunal may by summons require any person in the United Kingdom [or the Isle of Man] to attend as a witness at a hearing of an appeal at such time and place as may be specified in the summons and, subject to paragraph (2) below, at the hearing to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the appeal:

Provided that:–

(a) no person shall be required to attend in obedience to such a summons unless he has been given at least seven days' notice of the hearing or, if less than seven days, he has informed the Tribunal that he accepts such notice as he has been given, and

(b) no person, other than the appellant or the respondent, shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his attendance are paid or tendered to him.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in that part of the United Kingdom where the appeal is determined.

(3) In exercising the powers conferred by this rule, the Tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

(4) In addition to making reference to the consequences of a failure to attend, as provided by model rule D.2–1(3)(b), every summons under paragraph (1) of this rule shall, unless the application for the summons was made in the presence of the person to whom the summons is addressed, contain a statement to the effect that that person may apply to the Tribunal to vary or set aside the summons.

Notes

1. *Consistently with their view that procedural rules should be self-contained, the Council consider that an express provision for witnesses is to be preferred to the practice in some rules of making a cross-reference to the power to summon witnesses under the Arbitration Act. A general power for the making of rules for the summoning of witnesses in the enabling Act which extended to the whole of the United Kingdom would appear to authorise a rule for the summoning of witnesses in the United Kingdom. Additional provision would be necessary for witnesses from the Isle of Man or the Channel Islands. But parties may be advised, e.g. in guidance notes, to produce witnesses even if there is no special power to summon them or sanction for failure to attend. See the guidance material set out in the notes to model rule D.4–1.*

2. *A penalty for a witness's failure to attend requires express provision in the enabling Act. A witness summons should always draw attention to the existence of such a penalty (see model rule D.2–1(3)(b)).*

3. *For paragraph (3), see also note 5 to model rule D.2–3.*

D.2–5 Agreed facts

The Tribunal may give directions requiring the parties to provide a statement of agreed facts [facts in dispute] [issue or issues to be decided by the Tribunal] [a list of agreed documents].

Note

Such a provision should only be included as regards jurisdictions where the parties are likely to be professionally advised. See also model rule D.3–2(3)(b) for a provision where the Tribunal may seek to secure admissions or agreements during a pre-hearing review.

D.2–6 Medical examination

At any time before the hearing of the appeal, [the Tribunal may arrange for the appellant to be examined by a medical specialist for a report on his condition] [a medical member of the Tribunal may examine the [appellant] [person concerned] and take such other steps as he considers necessary to form an opinion of the [appellant's] [person concerned's] [mental] condition].

Note

1. *The first alternative in this model rule is suitable in any case where a medical question arises but the second alternative may be preferred where the Tribunal includes a medical member. In the latter case the medical member has two roles—one as witness and one as a member of the tribunal—and the appellant/applicant should have an opportunity of knowing his 'evidence' and of commenting on it.*

2. *See model rule D.2–8 for reports of experts.*

D.2–7 Experts: Parties

Not more than one expert witness on either side shall be heard unless otherwise allowed by the Tribunal.

Note

In order to save costs and to expedite hearings it may be desirable to limit the number of expert witnesses called by the parties.

D.2–8 Experts: the Tribunal

(1) Where the Tribunal is of the view that any medical or other technical question arises on which it would be desirable to have the assistance of an expert, it may make arrangements for a person having appropriate qualifications to enquire into and report on the matter and, if any party so requests, to attend at the hearing and give evidence.

(2) A copy of a report received from an expert as aforesaid shall be supplied to each party in advance of the hearing or any resumed hearing.

Notes

1. *Necessary financial provision will be required to enable the Tribunal to pay fees for the employment of experts.*

2. *Comprehensive provision for experts and their reports is included in rules 7A and 8 of the Complementary Rules of Procedure in Schedule 2 to the Industrial Tribunals (Rules of Procedure) Regulations 1985 (S.I. 16). See also* Lloyds Bank Plc v Fox *[1989] ICR 80, EAT.*

D.2–9 Entry upon land or premises

(1) The Tribunal may, for the purpose of [enabling a report to be prepared in respect of any proceedings before a Tribunal] [determining an appeal], make an order requiring the occupier of any land or premises (in these Rules referred to as "the occupier") to permit [the person authorised to make such report, accompanied by any party who wishes to be present, or his representative] [the Tribunal, accompanied by the parties or their representatives and such number of the Tribunal's officers or servants as it considers necessary], to enter and inspect such land or premises at a specified time not earlier than seven days after the date of service of a copy of the order on the occupier or of notifying him of any change in the time specified (or such shorter time as the occupier may accept).

(2) The Tribunal shall also serve a copy of the order [and of a report made following such inspection] on the parties and shall notify them of any change in the time specified. [The parties shall be given an opportunity to comment on any such report].

(3) In addition to making reference to the consequences of a failure to comply with such an order, as provided in model rule D.2–1(3)(b), every order under paragraph (1) of this rule shall, unless the application for the order was made in the presence of the occupier, contain a statement to the effect that the occupier may apply to the Tribunal to vary or set aside the order.

Notes

1. *This model rule is primarily designed for cases affecting land and provides for entry on land by an expert for the purpose of preparing a report for a tribunal (first alternative) or an inspection by the tribunal itself (second alternative). In either case provision is made for the presence of the parties. A rule requiring entry will require specific authority in the enabling Act, as will any provision for a penal sanction.*

2. *Where a report is made by an expert, copies should be sent to the parties (paragraph 2) who should be given, at the minimum, an opportunity to comment on the report. More comprehensive provision may be made, as in model rule D.2–8, for the attendance at the hearing to give evidence of the person who prepares a report.*

D.2–10

3. Where entry is made for inspection in the course of a hearing, the parties should be in a position to comment at the conclusion of the hearing. If the inspection is made after the close of the hearing, additional specific provision should be considered to the following effect:–

> *"Where an inspection is made after the close of a hearing, the Tribunal shall, if it considers that it is expedient to do so on account of any matter arising from the inspection, reopen the hearing."*

4. In addition to entering upon land, provision may be made for enquiries of local authorities or other bodies which have a public function in relation to the jurisdiction of the tribunal: e.g.–

> *"If it appears to the Tribunal that it is expedient to make enquiries of any local authorities within whose area the land in question is situated, the Tribunal may direct such enquiries to be made and may adjourn the hearing until the local authority's reply has been received and copies supplied to the parties."*

5. A right of entry may be required for purposes other than the inspection of land or premises. See paragraph 4(2)(d) of Schedule 3 to the Data Protection Act 1984 and rule 9 of the Data Protection Tribunal Rules, 1985 (S.I. 1568) which provide a right of entry for the purpose of testing data equipment or material.

D.2–10 Varying or setting aside of directions

Where a person to whom a direction (including any order or summons) issued under this Part of these Rules is addressed had no opportunity of objecting to the making of such direction, he may apply to the Tribunal to vary it or set it aside, but the Tribunal shall not do so without first notifying the person who applied for the directions and considering any representations made by him.

Note

This model rule would apply to parties (as well as to witnesses or occupiers who have not been afforded an opportunity to object in writing (see model rule D.2–1(2)) e.g. as a consequence of not receiving a copy of an application for directions. More limited provision confined to witnesses and occupiers is set out in model rules D.2–4(4) and D.2–9(3) respectively.

D.2–11 Failure to comply with certain directions

If any directions given to a party under this Part of these Rules are not complied with by such a party, the Tribunal may, before or at the hearing, dismiss the whole or part of the appeal, or as the case may be, strike out the whole or part of a respondent's reply and, where appropriate, direct that a respondent shall be debarred from contesting the appeal altogether:

Provided that a Tribunal shall not so dismiss or strike out or give such a

direction unless it has sent notice to the party who has not complied with the direction giving him an opportunity to show cause why it should not do so. D.2–12

Notes

1. *This model rule only relates to matters within a party's own power. It does not extend to the failure of a non-party witness to appear.*

2. *An alternative and less stringent provision as regards documents when the appropriate office of the tribunal is not used as a post office is the following:–*

> *"If it appears to the Tribunal that any party to proceedings has failed to send a copy of any document required under these Rules to be sent to any other party or to the Registrar, the Tribunal may direct that a copy of the document shall be sent as may be necessary and that the further hearing of the proceedings be adjourned, and may in any such case require the party at fault to pay any additional costs occasioned thereby."*

D.2–12 Consolidation of appeals

(1) Where two or more notices of appeal have been given in respect of the same matter, or in respect of several interests in the same subject in dispute, or which involve the same issues, the Tribunal may, on the application of a party to any of the appeals or of its own motion, order that the appeals or any particular issue or matter raised in the appeals be consolidated or heard together.

(2) Before making an order under this rule, the Tribunal shall give notice to the parties to the relevant appeals and consider any representations made in consequence of such notice.

Notes

1. *This rule only applies to appeals under the same jurisdiction.*

2. *In the case of regulatory authorities, there may be good reasons to require the tribunal to notify the relevant authority or a complainant if related proceedings have been instituted in order that connected issues may be considered together. See rule 2 of the Financial Services Tribunal (Conduct of Investigations) Rules 1988 (S.I. 351):*

> *"Where a matter has been referred to the Tribunal, the Tribunal shall, upon being requested to do so by the person referring it or by a person who has the right to require, or who has required, that the same or a related matter be referred to the Tribunal, inform the person making the request whether the same or a related matter has been referred and, if it has, of the identity of each person at whose request the reference was made."*

D.2–13 Test cases

Where two or more appeals appear to the Tribunal to involve the same issues, the Tribunal may, with the written consent of all parties to the appeals, direct that one or more appeals selected by the Tribunal shall be heard in the first instance as a test case or test cases and that the parties to each appeal shall, without prejudice to their right to appeal further [*to the appellate tribunal or court*], be bound by the decision of the Tribunal on the appeal or appeals so selected.

Note

This rule only applies to appeals under the same jurisdiction.

PART III: PRELIMINARY DECISIONS

D.3–1 Interim relief

On an application [under section ..... of the Act] [for the suspension of the disputed decision] [*specify other interim relief*] pending the determination of the appeal, the Tribunal may:–

(a) make such temporary order for suspension of the disputed decision [*other relief*] for a period not exceeding ..... days; and

(b) after giving the parties an opportunity to make representations in writing or, if it thinks fit, orally, extend such order with such variations as it may from time to time think appropriate until the determination of the appeal.

Notes

1. *A tribunal has no inherent power to suspend an administrative decision against which an appeal is made; the necessary power must be found substantively (section 27(5) of the Banking Act 1987) or in the rule-making power in the enabling Act itself (cf. section 152(3)(a) of the Copyright, Designs and Patents Act 1988, which provides for rules enabling a tribunal to suspend its own orders when there is an appeal to the Courts).*

2. *This model rule is confined to the exercise of jurisdiction of the tribunal when so empowered. For the necessary application by the appellant/applicant, see model rule B.5–1.*

3. *Interim relief is not necessarily confined to the suspension of orders of administrative authorities: see sections 77–79 of the Employment Protection (Consolidation) Act 1978 which provide for a continuation of employment where there is a complaint of unfair dismissal.*

(1) Where it appears to the Chairman that any procedings would be facilitated by holding a pre-hearing review, he may, on the application of a party or of his own motion, give directions for such a review to be held. The Registrar shall give the parties not less than fourteen days notice, or such shorter notice as the parties agree, of the time and place of the pre-hearing review.

(2) The pre-hearing review shall be in private unless the Chairman otherwise directs and the parties may appear and may be represented by [counsel or solicitor or by] any other person.

(3) On a pre-hearing review:–

(a) the Chairman or, subject to paragraph (4) of this rule, the Registrar shall give all such directions (including any directions referred to in Part II of this Head) as appear necessary or desirable for securing the just, expeditious and economical conduct of the appeal, and shall fix the time and place, not being less than fourteen days thereafter unless the parties agree to shorter notice, for the hearing of the appeal;

(b) the Chairman or, subject to paragraph (4) of this rule, the Registrar shall endeavour to secure that the parties make all such admissions and agreements as ought reasonably to be made by them in relation to the proceedings;

(c) the Chairman shall give directions as to the disclosure of any document sought to be protected on grounds of its confidential nature, its commercial sensitivity or national security and of the safeguards to be observed by those to whom such document is disclosed. [Every direction under this sub-paragraph shall contain a reference to the fact that, under section ... of the ..... Act, any person who fails to observe the safeguards on disclosure shall be liable on summary conviction to a fine not exceeding the ..... level on the standard scale];

(d) the Chairman may, if the parties so agree and notwithstanding rule H.4–6, thereupon determine the appeal on the documents and statements then before him without any further oral hearing.

(4) The Registrar shall exercise the powers conferred on him by paragraph (3)(a) and (b) of this rule in accordance with the directions of the Chairman and any direction given by the Registrar on a pre-hearing review may be set aside or varied by the Chairman on the application of a party or of his own motion.

Notes

1. *In paragraph (3), a distinction is made between the powers that may be exercised by the Chairman or, subject to his directions, the Registrar (sub-paragraphs (a) and (b)) and those that may only be exercised by the Chairman himself (sub-paragraphs (c) and (d)). Under model rule H.3–4, 'Registrar' includes any assistant registrar; it may be desirable to except model rule D.3–2 from that provision. Paragraph (4), in effect, provides an*

appeal from the Registrar to the Chairman. See also notes to model rule H.3–4.

2. *Paragraph (3)(b) may not be suitable for appeals from decisions of administrative authorities. The power will need to be exercised with particular care if a party or the parties are not professionally represented.*

3. *The final sentence in paragraph (3)(c) requires specific provision in the enabling Act.*

D.3–3 Preliminary issues

(1) The Tribunal may order any question of fact or law which appears to be in issue in the appeal to be determined at a preliminary hearing.

(2) If, in the opinion of the Tribunal, the determination of that question substantially disposes of the whole appeal, the Tribunal may treat the preliminary hearing as the hearing of the appeal and may make such order by way of disposing of the appeal as the Tribunal thinks fit.

(3) If the parties so agree in writing, the Tribunal may determine the question without an oral hearing but, in any such case, the Tribunal may not at the same time dispose of the appeal unless the parties have also agreed in writing that it may do so and had an opportunity of making representations in writing.

Notes

1. *Preliminary issues may be of a general nature (e.g. that the appeal is misconceived— see model rule C.1–3)—or specific (e.g. as to the capacity of the applicant—such as credentials issues under the Copyright Tribunal Rules 1989 (S.I. 1129)). Departments should consider whether, having regard to the particular jurisdiction of a tribunal, attention should be drawn to the possibility of a preliminary hearing in any approved form and to whether any specific provision needs to be made at model rule C.5–1.*

2. *For comments on the appropriateness of a preliminary hearing by an industrial tribunal, see* Munir and Anor v Jang Publications Ltd *[1989] ICR 1, at 6, CA.*

PART IV: NOTICE OF HEARING

D.4–1 Notice of time and place of hearing

(1) The Registrar shall, with due regard to the convenience of the parties, fix the time and place of the oral hearing and, not less than twenty one days before the date so fixed (or such shorter time as the parties agree), send to each party a notice that the hearing is to be at such time and place.

(2) The Registrar shall include with the notice of hearing:– **D.4–1**

(a) information and guidance, in a form approved by [the President of] the Tribunal, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation or assistance by another person;

(b) a statement of the right of the parties to ask for and to receive reasons in writing for a decision of the Tribunal;

(c) a statement explaining the possible consequences of non-attendance and of the right of an appellant, and of any respondent who has presented a reply, who does not attend and is not represented, to make representations in writing.

Notes

1. *For paragraph (2)(b), see section 12(1) of TIA.*

2. *If there have been no interlocutory proceedings for the attendance of witnesses or the production of documents, the parties may need more than twenty one days notice to make arrangements for the attendance of a witness (e.g. to contact the witness and arrange for his absence from work) or finding and assembling documents.*

3. *An illustration of a note of rules of procedure and evidence is set out below. The content of the note should be as simple as the procedure allows without misleading the parties, should warn the parties of the need to produce witnesses and documents, and should draw attention (so far as the rules allow) to the availability of compulsory powers for securing the attendance of witnesses and the production of documents.*

D.4-1

NOTE OF RULES OF PROCEDURE AND EVIDENCE

IF YOU REQUIRE ANY FURTHER ASSISTANCE, YOU SHOULD CONSULT ANY OFFICE OF THE TRIBUNAL OR AN OFFICE OF THE CITIZENS ADVICE BUREAU. YOU WILL FIND THE ADDRESS OF THE CITIZENS ADVICE BUREAU IN THE TELEPHONE DIRECTORY.

(1) **Procedure at the Hearing**

(a) The tribunal sits in public unless exceptional circumstances make it desirable that some part of the hearing should take place in private.

(b) The Chairman of the tribunal will give further guidance as to the procedure at the beginning of the hearing.

(c) A party may appear and be heard in person or by counsel or solicitor or by another representative appointed in writing. If you have previously notified the tribunal of the name of your representative there is no need to tell it again.

(d) Usually the party bringing the appeal will begin and the other parties will be heard in such order as the tribunal may determine. However, if the tribunal is of the view that it would assist it and the appellant if the Authority first made a statement of facts, it may hear such a statement before calling upon the appellant.

(2) **Witnesses**

(a) A party may, if he wishes, give evidence as a witness on his own behalf and may call other witnesses. All witnesses may be cross-examined by the other party.

(b) If you have a witness who is willing to attend voluntarily, make sure that you give him adequate warning of the time and place of the hearing. [If, however, someone you wish to give evidence for you is unwilling to attend voluntarily and you wish him to be ordered to attend, you should apply immediately to the office of the tribunal.]

(3) **Rules of Evidence**

(a) Any relevant evidence may be admitted by the tribunal, including evidence that would not be admissible in a court of law.

(b) Evidence before the tribunal may be given—

(i) orally,

[(ii) by affidavit, if the parties consent, or]

[(iii) by means of written statements produced by the maker when giving evidence or, if the tribunal consent, by another witness.]

[If evidence is tendered in the form of a written statement, four copies of

the statement should be available at the hearing for the tribunal and two copies for the other parties.]
[The tribunal may require oral evidence to be substantiated on oath or by affirmation.]

[(c) At any stage of the proceedings the tribunal may, of its own motion or on the application of any party, order the personal attendance of the maker of any written statement for examination and cross-examination.]

(d) If you have any documents on which you rely in support of your case, you should bring them with you to the hearing.
[The Registrar may also require a party to give to the tribunal documents or other information concerning the appeal, and to give to other parties an opportunity to inspect such documents and to take copies of them. If you seek documents relevant to your case which you believe to be in the possession of another party, you should immediately consult the Registrar.]
[If the parties intend to produce documents at the hearing, they should if possible agree them beforehand, list them in order and put them into one agreed bundle. Four copies of this bundle should be available if possible for the use of the tribunal.]

[(e) The tribunal may, after giving notice to all parties and to any occupier of the land, enter and inspect any land owned or occupied by any party which is the subject of the proceedings and may inspect any fixed or other equipment or produce thereon.]

(4) **Decisions and reasons**

A party may ask for a written copy of the decision and the reasons for it. He should make his request either during the course of the hearing or in writing at any time before the decision is given.

(5) **Absence of a party from the hearing**

If you do not intend to be present or to be represented at the hearing, you may submit further written representations in support of your case to the tribunal. The representations must reach the tribunal before the date of the hearing. If a party does not appear at the hearing—

(i) the tribunal may hear and determine the appeal in his absence or

(ii) it may adjourn the appeal and it may make such order as regards costs and expenses as it thinks just.

D.4–2 Alteration of time and place of hearing and adjournments

(1) The Tribunal may alter the time and place of any oral hearing and the Registrar shall give the parties not less than seven days (or such shorter time as the parties agree) notice of any such alteration:

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under rule D.4–1.

(2) The Tribunal may from time to time adjourn the oral hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

(3) When any hearing is adjourned in order that further information or evidence may be obtained, the Tribunal may give directions regarding the disclosure of such information or evidence to, and the filing of comments on such information or evidence by, the parties prior to the resumption of the hearing.

D.4–3 Public notice of hearings

The Registrar shall provide for public inspection at [the principal] [*the appropriate*] office of the Tribunal a list of all appeals for which an oral hearing is to be held and of the time and place fixed for the hearing.

Note

Although publicity for hearings is, in general, desirable, there may be jurisdictions where the opposite is the case: see rule 21(5) of the Mental Health Review Tribunal Rules 1983 (S.I. 942): "Except in so far as the Tribunal may direct, information about proceedings before the Tribunal and the names of any persons concerned in the proceedings shall not be made public."

E.1–1 Power to determine an appeal without a hearing

(1) The Tribunal may–

(a) if all the parties so agree in writing; or

(b) in the circumstances described in rule C.5–4,

determine an appeal, or any particular issue, without an oral hearing.

(2) The provisions of paragraph (2) of rule E.1–6 and of paragraph (5) of rule E.1–7 shall apply in respect of the determination of an appeal, or any particular issue, under this rule.

Notes

1. *A rule on these lines would also enable a tribunal to dispense with an oral hearing when the terms of the decision are agreed in advance by the parties; see also model rule H.4–1(2)(d).*

2. *There are precedents for dispensing with a hearing in other circumstances. The most extreme case, which the Council on Tribunals do not favour, is where the tribunal has power to decide a question without an oral hearing unless a hearing is requested by the appellant or either party: see rule 12 of the Immigration Appeals (Procedure) Rules 1984 (S.I. 2041). More defensible are those cases where the same issue has been previously determined by a tribunal on materially similar facts, e.g.:*

> *"Where it appears to the Tribunal that the issues raised on an appeal have been determined by [the Tribunal] [a Tribunal having the same jurisdiction] in previous proceedings to which the appellant was a party on the basis of facts which did not materially differ from those to which the appeal relates and the Tribunal has given to the parties an opportunity to make representations to the effect that the appeal ought not to be determined without a hearing, the Tribunal may determine the appeal without an oral hearing".*

See rule 10(1) proviso (c) of the Data Protection Tribunal Rules 1985 (S.I. 1568).

3. *For the relevance of Article 6.1 of the European Convention on Human Rights to the absence of a hearing, see note 4 to model rule E.1–2.*

E.1–2 Hearings to be in public: exceptions

All hearings by the Tribunal (including preliminary hearings) shall be in public except where the Tribunal is satisfied that, by reason of the disclosure of

E.1–2 [ ] [matters concerning national security], it is just and reasonable for [the hearing] [the relevant part of the hearing] to be in private.

Notes

1. *This model rule and model rule E.1–3 are concerned with the question whether hearings are to be held in public or in private. "Publicity of proceedings" (together with "knowledge of the essential reasoning underlying the decisions") was regarded by the Franks Committee as a requirement of openness—one of the three basic characteristics which tribunals should exhibit (Franks Report, paras. 42 and 76 et seq.). The Council take the view that public hearings should be the normal rule and that a case must always be made out for any departure from the general rule that hearings should be held in public.*

2. *However, the Franks Committee accepted that "there are occasions in which ... justice may be better done, and the interests of the citizen better served, by privacy", and it recognised three types of case in which it was desirable for a tribunal to be able to sit in private, namely, where there are considerations of public security, where intimate personal or financial circumstances have to be disclosed, and, "on balance", cases involving professional capacity or reputation. "Accordingly we recommend that where a tribunal is of a class which has to deal almost exclusively with any of these three types of cases the hearings should continue to be in private. In the case of all other classes of tribunal, however, the hearing should be in public, subject to a discretionary power in the chairman to exclude the public should he think that a particular case involves any of these considerations" (Franks Report, para. 76 et seq.). The Council have also followed these recommendations of the Franks Committee.*

3. *An additional factor to be borne in mind is Article 6.1 of the European Convention on Human Rights. This follows the same general thrust as the Franks Committee and provides:*

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and* **public hearing** *within a reasonable time by an independent and impartial tribunal established by law.* **Judgement shall be pronounced publicly but the press and public may be excluded** *from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice" (emphasis supplied).*

The article applies to proceedings for the determination of civil rights and obligations (and therefore to the proceedings of those tribunals which are, in effect, specialised courts) but the European Court of Human Rights has given the expression 'civil rights and obligations' an extended meaning which could well embrace the decisions of some administrative authorities and the functions of tribunals hearing appeals from such decisions (see the judgements of the Court in Feldbrugge v the Netherlands *and* Deumeland v the

Republic of Germany, *Series A, vols 99 and 100). Where, however, there are several stages (e.g. administrative decision, appeal, second appeal) "account must be taken of the entirety of the proceedings" in applying Article 6.1 (judgement of the Court in* Axen v Federal Republic of Germany *Series A, vol 72). The exceptions permitted in the second sentence apply to the hearing, not to the pronouncement of the judgement, for which see notes to model rule E.1–9.*

4. *Article 6.1 of the Convention is also relevant to the question whether there should be an oral hearing and to the compatibility with the Convention of model rule E.1–1. In earlier cases the European Commission did not consider that the Article precluded wholly written proceedings so long as there was an opportunity for the appellant to make an adequate presentation of his case. In its decision in* Le Compte, Van Leuven and De Mayere v the Netherlands *(Judgements of the Court, Series A, vol 43) the Court held that "neither the letter nor the spirit of Art. 6 paragraph 1" prevents parties, at least in disciplinary proceedings, from waiving their right to a public hearing.*

5. *Model rule E.1–2 above makes provision for public hearings as a general rule, only permitting exceptional departures in limited circumstances. These circumstances should be specified in the rule rather than be left to the general discretion of the tribunal. Accordingly the blank in line three should be completed with "intimate personal or financial circumstances", "commercially sensitive information", "information communicated or obtained in confidence", as the case may be.*

6. *Where there is power for the tribunal to hold a hearing or part of a hearing in private, that is a matter for the tribunal and not (in the absence of provision in the enabling Act or rules) a matter for agreement by the parties:* Milne and Lyall v Waldren *[1980] ICR 138, EAT.*

7. *Care must be taken to ensure that 'hearing' is so defined as to exclude the hearing and determination of interlocutory applications and any pre-hearing review. See the precedent in model rule I.1–5.*

8. *Model rule E.1–3 makes appropriate provision where private hearings are justified as of course in the kind of cases referred to in the passage from the Franks Reports quoted in note 2 above.*

E.1–3 Hearings to be in private

(1) The hearing shall be in private unless the Tribunal [with the consent of the parties] directs that the hearing, or part of it, shall be in public.

(2) Where the Tribunal sits in private it may admit to the hearing such persons on such terms and conditions as it considers appropriate.

[(3) Except so far as the Tribunal may direct, information about proceedings before the Tribunal and the names of any person concerned in the proceedings shall not be made public.]

Notes

1. *The Council on Tribunals consider that a rule of this kind should only be made in circumstances expressly authorised by the enabling Act and can only be justified in cases where the tribunal "has to deal almost exclusively" with the kind of case quoted from the Franks Report in note 2 to model rule E.1–2.*

2. *For persons in addition to members and officers of the Tribunal, the parties, their representatives and witnesses, who are entitled to be present at private hearings, see model rule E.1–4(1)(a) and (b).*

3. *Even when the subject matter of proceedings justifies the holding of hearings in private as a matter of course, it does not follow that the extent of the privacy to be accorded will be the same in all cases. A rule such as paragraph (3) may well be suitable in e.g. mental health cases, but there would seem to be no cogent reason for names to be withheld from lists of forthcoming cases or suitably edited reports in e.g. revenue cases.*

4. *The extreme case of the exclusion of persons from a hearing would extend to a party. This is possible under rule 21 (4) of the Mental Health Review Tribunal Rules 1983 (S.I. 942):–*

> *"The Tribunal may exclude from any hearing or part of a hearing any person or class of persons, other than a representative of the applicant or of the patient to whom documents would be disclosed in accordance with rule 12 (3), and in any case where the Tribunal decides to exclude the applicant or the patient or their representative or a representative of the responsible authority, it shall inform the person excluded of its reasons and record those reasons in writing."*

E.1–4 Persons entitled to be present at hearings or deliberations

(1) The following persons shall be entitled to attend the hearing of an appeal, whether or not it is in private:–

(a) the President or any Chairman or member of the Tribunal notwithstanding that they do not constitute the Tribunal for the purpose of the hearing;

(b) a member of the Council on Tribunals or of the Scottish Committee of that Council.

(2) The Tribunal with the consent of the parties may permit any other person to attend the hearing of an appeal which is held in private.

Note

For the views of the Council on the need for appropriate provision to be made to enable the Council to exercise their supervisory functions, see the Special Report by the Council on their Functions, 1980 (Cmnd 7805) para. 3.8.

E.1–5 Exclusion of persons disrupting proceedings

Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

E.1–6 Failure of parties to attend hearing

(1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the Tribunal may:–

(a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or

(b) adjourn the hearing;

and may make such order as to costs and expenses as it thinks fit.

(2) Before deciding to dispose of any appeal in the absence of a party, the Tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.

(3) Where an appellant has failed to attend a hearing of which he was duly notified, and the Tribunal has disposed of the appeal, no fresh appeal may be made by the appellant to a Tribunal [against the same disputed decision] [for relief arising out of the same facts] without the prior leave of the Tribunal:

Provided that nothing in this paragraph shall preclude the appellant making an application for a review of the Tribunal's decision under rule E.1–10.

Notes

1. *"Provided that an adequate opportunity of attending is given to all parties, tribunals should have discretion to proceed with hearings and inspections in the absence of a party" (Franks Report, para. 74).*

2. *Paragraph (1) of this rule gives power to give effect to a warning set out in the notice of hearing (see notes to model rule D.4–1) of the possible consequences of a failure to attend a hearing.*

3. *The Council consider that where a tribunal makes a decision under a rule of this kind, it should include with the copy of the decision sent to the absent party a notification of his rights as regards the proviso to paragraph (3).*

4. *In the case of a tribunal concerned with pensions or disability claims where the possibility of an appellant being unable to attend through infirmity may not be unusual, the following additional rule may be considered:–*

E.1–7

"Where the Chairman is satisfied that any appellant is unable, through physical or mental infirmity, to attend the Tribunal and that his incapacity is likely to continue for a prolonged period, the Chairman may make such arrangements as may appear to him best suited, in all the circumstances of the case, for disposing fairly of the appeal, and in particular may arrange:–

(a) for the appellant to be visited at some convenient place by one or more members of the Tribunal, or by other persons appointed in that behalf by the Chairman, for the purpose of recording the appellant's evidence and any statment he may wish to make and for the appellant to be medically examined;

(b) for taking, whether before the Tribunal or otherwise, the evidence of medical or other witnesses on behalf of the appellant and the respondent, and in particular the evidence of the near relatives, guardian or other representative of the appellant;

(c) for enabling the appellant's representative and the respondent to comment, whether at a hearing of the Tribunal or in writing, on the evidence so taken and to make a statement in writing or to address the Tribunal;

(d) for the determination of the appeal in the absence of the appellant:

Provided that any arrangement made under paragraph (a) or (b) shall make provision for enabling the representative of the respondent, if he so desires, to be present while the evidence of the appellant and other witnesses is taken and to ask questions of the appellant and other witnesses."

E.1–7 Procedure at hearing

(1) At the beginning of the hearing the Chairman shall explain the order of proceeding which the Tribunal proposes to adopt.

(2) Subject to this rule, the Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings.

(3) The parties shall be heard in such order as the Tribunal shall determine. They shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the appeal.

[(4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or written statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent or maker of a written statement.]

(5) The Tribunal may receive evidence of any fact which appears to the

Tribunal to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(6) At any hearing the Tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice or statement of grounds of appeal or, as the case may be, his reply [and to adduce any evidence not presented to *the Authority* before or at the time it took the disputed decision].

(7) A Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Notes

1. *The Council attach particular importance to unrepresented parties knowing the course the proceedings will follow. Hence the provision in paragraph (1) that the Chairman should explain the order of proceedings at the start of the hearing. The Council also commend the practice adopted by some tribunals of the Clerk to the tribunal giving unrepresented parties such an explanation before the commencement of the hearing.*

2. *The Franks Report contained a number of comments and recommendations particularly relevant to the conduct of an oral hearing by a tribunal. As regards formality, the Report recommended that "the object to be aimed at ... is the combination of a formal procedure with an informal atmosphere .... On the one hand it means a manifestly sympathetic attitude on the part of the tribunal and the absence of the trappings of a court, but on the other hand such prescription of procedure as makes the proceedings clear and orderly" (para. 64). As to the order of events, the Franks Committee were of the opinion that "a definite order of events at a tribunal promotes clarity and regularity." It recognised however that "adherence to a set order might make it difficult for an unaided applicant to present his case properly.... This point can be met by giving tribunals a discretion to vary the procedure where it appears to them desirable in the interests of justice" (para. 75). For the dangers of informality and an absence of rules of procedure, see* Aberdeen Steak Houses v Ibrahim *[1988] ICR 550, EAT.*

3. *Paragraphs (2) and (3) are designed to accord with these recommendations, permitting the tribunal (as is the practice in some tribunals) to vary the order of proceedings, for example to allow an official representing a respondent authority to give a statement of the facts rather than to put the burden of "opening" the proceedings on an unrepresented appellant. Such a variation in order does not, however, affect the requirements of paragraph (3) which is designed to provide all parties a full opportunity to put their case. A less flexible procedure may, however, be called for, e.g. where the issue is professional misconduct: see rule 10 of the Misuse of Drugs Tribunal (England and Wales) Rules 1974 (S.I. 85).*

4. *Two matters of a general nature need to be considered as regards the*

procedure at a hearing, namely the burden of proof and the nature of the tribunal's function. In the absence of any express provision in the enabling Act or the rules as regards the burden of proof, the ordinary rule applies, namely that the onus lies on the party seeking to establish a claim. However, the Act may itself alter the burden of proof or may authorise the making of rules for that purpose. Possible rules are:–

> *"In any proceedings before the Tribunal it shall be for the Authority to satisfy the Tribunal that the disputed decision should be upheld." (Cf. rule 19 of the Data Protection Tribunal Rules 1985 (S.I. 1568));*
>
> *".....in no case shall there be any onus on any claimant under this article to prove the fulfilment [of the prescribed conditions] and the benefit of any reasonable doubt shall be given to the claimant". (Cf. Article 4(2) of the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 1978 (S.I. 1525)).*

Even in the absence of an express provision, the standard of proof may vary with the jurisdiction of the tribunal. The Divisional Court has held that where a decision affects a person's livelihood, the standard of proof should not be lower than in criminal proceedings: R v Milk Marketing Board ex parte Austin *The Times 21 March 1983 quoted in 1983 CJQ 283.*

5. *The second general issue concerns the question whether a tribunal's function is essentially that of an arbiter in adversarial proceedings or whether it is inquisitorial. Where it is intended that a tribunal shall have investigatory functions of its own, the enabling Act should make or provide for the appropriate powers: see the Financial Services Act 1986, section 98. Where, however, the essential role of the tribunal is adjudicative then, even where there are inquisitorial aspects to its functions, there should usually be no need for any special provision beyond ensuring that the tribunal has the power of its own motion (in case it is needed) to call witnesses or to require particulars or the production of documents. An example of a power to obtain additional information subject to a penal sanction is to be found in paragraph 7 of Schedule 11 to the Rent Act 1977.*

6. *Another aspect of the interventionist function of a tribunal is to ensure that the unrepresented and inexperienced party's case is put as effectively as possible. Again, no special rule should ordinarily be needed. In* Chilton and Anor v Saga Holidays plc *[1986] 1 All ER 841 CA (small claims arbitration in county court), Sir J Donaldson, MR commented as follows:*

> *"The problem which arises where you have one represented party and one unrepresented party is very well known to all judges and in particular to judges who deal with small claims in the county court. It becomes the duty of the judge so far as he can, without entering the arena to a point where he is no longer able to act judicially, to make good any deficiencies in the advantages available to the unrepresented party. We have all done it; we all know that it can be done and that it can be done effectively. That is the proper course to be adopted. The informality which is stressed by the rule and the requirement that the arbitrator may adopt any method of procedure which he considers to be convenient (it would have*

been better perhaps if it had said 'just and convenient') covers the situation where, as so often happens, a litigant in person is quite incapable of cross-examining but is perfectly capable in the time available for cross-examination of putting his own case. The judge or the registrar then picks up the unrepresented party's complaints and puts them to the other side."

However, a provision which might be considered for tribunals hearing appeals or applications by unrepresented and inexperienced parties against an administrative authority is "It shall be the duty of the Tribunal to assist any appellant who appears to it to be unable to make the best of his case" (see rule 11(2) of the Pensions Appeal Tribunals (England and Wales) Rules 1980 (S.I. 1120)).

7. *Paragraphs (4) and (5): the power to admit evidence which would be excluded in a court of law may be cut down by excluding certain evidence unless the parties consent; see rules 21 and 28 of the Value Added Tax Tribunals Rules 1986 (S.I. 590). In order to avoid restricting in such a fashion the nature of written evidence which may be admitted, the words "if the parties to the proceedings consent" are omitted from paragraph (4), the necessary safeguard being provided by the second element of that paragraph. Other evidence which may be excluded is evidence withheld from the appellant or other person who is the subject of the proceedings: see note 9 to model rule D.2–3.*

8. *The latter half of paragraph (5) is designed to give effect to the decision in* Rosedale Mouldings Ltd v Sibley *[1980] ICR 816, EAT.*

9. *The first leg of paragraph (6) confers a discretion on the tribunal to be used with care. "It should not be necessary, and indeed in view of the type of person frequently appearing before tribunals it would in many cases be positively undesirable, to require the parties to adhere rigidly at the hearing to the case previously set out, provided always that the interests of another party are not prejudiced by such flexibility" (Franks Report, para. 72). However, the interests of the other party include knowledge in good time of the main points of the opposing case. The passage in square brackets may be considered in cases where it is desired to avoid the consequences of the general rule that, on an appeal from a decision, events subsequent to the decision are to be ignored:* R v IAT ex parte Weerasuriya *[1983] 1 All ER 195:* R v IAT ex parte Kotecha *[1983] 1 WLR 487; [1983] 2 All ER 289.*

10. *Paragraph (7): the Franks Committee reported (para. 91): "... as an essential safeguard all tribunals should have power to administer the oath when circumstances require. Those tribunals which are most akin to courts of law, for example the Lands Tribunal, should, we think, always take evidence on oath. All other tribunals should have power to administer the oath, but we do not think that it should normally be necessary for them to exercise the power. Its exercise should be wholly at the discretion of the tribunal." An express provision to this effect has become customary notwithstanding that, so far as England and Wales are concerned, there is a general power to administer oaths in section 16 of the Evidence Act 1851.*

E.1–8 *11. For the views of the EAT on the procedure to be followed where the hearing is split into two, one part concerned with substance, the other with compensation, see* Iggesund Converters Ltd v Lewis *[1984] ICR 544, EAT.*

12. The Council on Tribunals do not suggest it is necessary to make any express provision requiring the Chairman to take a note of proceedings at a hearing, considering that this is part of the duty of those exercising a judicial function to which effect may be given according to the circumstance of the case. As regards the right of an appellant to the Employment Appeal Tribunal to obtain the notes of evidence taken by the Chairman of an industrial tribunal, see Burnett v Value Travel Agency Ltd *[1989] ICR 79, EAT.*

E.1–8 Decision of Tribunal

(1) A decision of a Tribunal may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority:

Provided that where the Tribunal is constituted by [two] [an even number of] members, the Chairman shall have a second or casting vote.

(2) The decision of a Tribunal may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, shall be recorded forthwith in a document which [save in the case of a decision by consent] shall also contain a statement of the reasons (in [full] [summary] form) for its decision, and shall be signed and dated by the Chairman.

(3) The Registrar shall send a copy of the document recording the decision to each party.

[*Alternative*]

(3) Subject to paragraph (4), every document referred to in this rule shall, as soon as may be, be entered in the register and the Registrar shall send a copy of the entry to each party.

(4) Where any such document refers to any evidence that has been heard in private, [the material relating to that evidence shall be omitted from the register] [only a summary of the document, omitting such material, shall be entered in the register] as the Tribunal may direct, but copies of the complete document shall be sent to the parties together with a copy of the entry.

(5) Every copy of [a document] [an entry] sent to the parties under this rule shall be accompanied by a notification of any provision of the Act relating to appeals from the Tribunal and of the time within which and place at which such appeal or any application for leave to appeal shall be made.

(6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the appellant.

[(7) Any sum payable in pursuance of a decision shall, if a county court so orders, be recoverable by execution issued from a county court.] **E.1–8**

Notes

1. *The Council on Tribunals are of the view that a tribunal should as a rule consist of an uneven number of members. They recognise however that, if in the course of the hearing a member, other than the chairman, should be unable to continue to sit (e.g. on account of illness), the tribunal should, if the parties agree, continue to sit with only two members—see model rule H.3–2. The Council consider that only exceptional circumstances would justify a tribunal commencing a hearing with only two members and then only if the parties agreed.*

2. *There is authority that as a general principle where matters of a public nature are entrusted to a tribunal consisting of a number of members, the decision of the majority is the decision of the tribunal:* Picea Holdings Ltd v London Rent Assessment Panel *[1971] 2 QB 216; [1971] 2 All ER 805 distinguishing* Brain v Minister of Pensions *[1947] KB 625; [1947] 1 All ER 892 and* Minister of Pensions v Horsey *[1949] 2 KB 526; [1949] 2 All ER 314. An express majority would however be prudent.*

3. *Section 57 (3) of the Employment Protection (Consolidation) Act 1978 provides that Industrial Tribunals shall decide questions relating to unfair dismissal "in accordance with equity and the substantial merits of the case." It is worth considering whether such a provision should be inserted in the enabling Act.*

4. *The Council take the view that where decisions are given on the spot they should always be confirmed in writing, and the Council have been concerned over delays in furnishing written decisions. However, the difficulty about prescribing a time for recording a decision in writing is that there is no practical sanction for a failure to comply with such a rule.*

5. *The giving of reasons for decisions was regarded by the Franks Committee as one of the two essentials of "openness" (para. 42) and section 12 of TIA provides that, save in cases where the Lord Chancellor or the Lord Advocate, after consultation with the Council on Tribunals, excludes a tribunal from the operation of the section, tribunals placed under the supervision of the Council have a duty to furnish a statement, either written or oral, of the reasons for the decision if requested on or before the giving or notification of the decision to state the reasons.*

6. ***The Council take the view that the general rule should be that written reasons should be provided for all decisions, whether given orally or in writing, either automatically or on request, and preferably automatically.*** *As regards the minimum requirement for the content of the reasons, Woolf J in* Crake v Supplementary Benefits Commission *[1982] 1 All ER 498 at 506 said "It has got to be borne in mind, particularly with tribunals of this sort, that they cannot be expected to give long and precise accounts of their reasoning; but a short and concise statement in clear language should normally be possible*

which fairly indicates to the recipient why his appeal should be allowed or dismissed....." See also R v IAT ex parte Khan (Mahmud) *[1983] 2 All ER 420 CA;* R v Mental Health Review Tribunal ex parte Clatworthy *[1985] 3 All ER 699.*

7. *As regards the finding of facts and the duty of a tribunal to have regard to the burden of proof, see* Morris v London Iron & Steel Co. Ltd. *[1988] QB 493; [1987] ICR 855, CA. The duty to give reasons, however, does not require an analysis of facts:* Kearney and Trecker Marwyn Ltd v Varndell *[1983] IRLR 335, CA.*

8. *A decision of a properly constituted industrial tribunal which gave a full reasoned decision was held to be a judicial decision by a judicial tribunal for the purposes of the doctrine of res judicata in* Green and another v Hampshire C.C. *[1979] ICR 861, Ch.D. See also* Crown Estates Commissioners v Dorset C.C. *[1990] 1 All ER 19. The decisions in rates and taxes cases are, however, of limited effect:* Society of Medical Officers of Health v Hope (Valuation Officer) *[1960] AC 551; [1960] 1 All ER 317, HL.*

9. *Paragraph (7): it is highly improbable that in the general run of cases provision is made to enable a tribunal itself to enforce any monetary award (including interest and costs). The usual practice is for such awards to be enforceable by execution issued from the county court. This requires authority in the enabling Act—see paragraph 7 of Schedule 9 to the Employment Protection (Consolidation) Act 1978; but a repetition of the statutory provision in the procedural rules would be a helpful indication to those to whom the Act is not easily available or understandable.*

10. *The decisions of a tribunal may also require to be perfected by other implementing orders and in appropriate cases (e.g. where the order is to be given effect to by an administrative authority) it may suffice for the power to give such orders (when authorised by the enabling Act) to be conferred on the tribunal. The following is an example of a rule in this sense from the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 439):*

> *"29. (1) On or after deciding an appeal the tribunal may in consequence of the decision by order require–*
>
> *(a) the alteration of any community charges register (prospectively or retrospectively);*
>
> *(b) the alteration of any estimate made under regulations made under Schedule 2 to the Act;*
>
> *(c) the revocation of any designation of an individual as a responsible individual in pursuance of regulations under Schedule 2 to the Act;*
>
> *(d) the quashing of a penalty imposed under Schedule 3 to the Act;*
>
> *(e) the revocation of a designation under section 5.*

(2) An order may require any matter ancillary to its subject matter to be attended to."

E.1–9 Publication of decision

The Tribunal may make arrangements for the publication of its decisions as it considers appropriate, but in doing so shall have regard to the need to preserve the confidentiality of any evidence heard in private and for that purpose may make any necessary amendments to the text of a decision.

Notes

1. *This rule is concerned with the principal of "openness"—so as to ensure that the press and public may be aware of how justice is done. It thus serves a similar purpose to model rule H.3–5.*

2. *In this connection also, regard needs to be had to Article 6.1 of the European Convention on Human Rights quoted in note 3 to model rule E.1–2 when proceedings would fall within the category of the 'determination of civil rights and obligations'. However, the European Court of Human Rights has not adopted a literal interpretation of the requirement that judgement shall be pronounced publicly. In* Axen v Federal Republic of Germany *(Judgements of the Court, Series A, vol 72), the Court held:*

> *"However, many member States of the Council of Europe have a long standing tradition of recourse to other means, besides reading out aloud, for making public the decision of all or some of their courts, and especially of their courts of cassation, for example deposit in a registry accessible to the public. The authors of the Convention cannot have overlooked that fact, even if concern to take it into account is not so easily identifiable in their working documents as in the* travaux preparatoires *of the 1966 Covenant .... The Court therefore does not feel bound to adopt a literal interpretation. It considers that in each case the form of publicity to be given to the "judgement" under the domestic law of the respondent State must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 para. 1."*

3. *Exceptionally, publication may not be appropriate. Rule 21 (5) of the Mental Health Review Tribunal Rules 1983 (S.I. 942) provides that information about proceedings before that tribunal and the names of any persons concerned shall not be made public.*

4. *A separate consideration which needs to be borne in mind is the publication of reports: "Publication of reports of leading cases dealt with by final appellate tribunals would be of help, not only in satisfying the public that decisions were reasonably consistent but also as a guide to appellants and their advisors. Accordingly we recommend that all final appellate tribunals should publish selected decisions and circulate them to any lower tribunals.*

The selection of such cases should be the responsibility of the appellate tribunals" (Franks Report, para. 102).

E.1–10 Review of Tribunal's decision

(1) If, on the application of a party or of its own motion, a Tribunal is satisfied that:–

(a) its decision was wrongly made as a result of an error on the part of the Tribunal staff; or

(b) a party, who was entitled to be heard at a hearing but failed to appear or be represented, had good and sufficient reason for failing to appear; or

(c) new evidence has become available since the conclusion of the hearing to which the decision relates the existence of which could not have been reasonably known of or foreseen; or

[(d) the interests of justice require,]

the Tribunal may review and, by certificate under the Chairman's hand, set aside or vary the relevant decision.

(2) An application for the purposes of paragraph (1) of this rule may be made immediately following the decision at the hearing. If an application is not made at the hearing, it shall be made to the Registrar at any time not later than fourteen days after the date on which the decision was sent to the parties, and shall be in writing stating the grounds in full. When the Tribunal proposes to review its decision of its own motion, it shall serve notice of that proposal on the parties within the same period.

(3) The parties shall have an opportunity to be heard on any application or proposal for review under this rule and the review shall be determined by the Tribunal which decided the case or, where it is not practicable for it to be heard by that Tribunal, by a Tribunal appointed by the [President or a Regional Chairman]; and if, having reviewed the decision, the decision is set aside, the Tribunal shall substitute such decision as it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(4) The certificate of the Chairman as to the setting aside or variation of the Tribunal's decision under this rule shall be sent to the Registrar and the Registrar shall immediately make such correction as may be necessary in the register and shall send a copy of the entry so corrected to each of the parties [and to *the Authority*].

Notes

1. *See generally "An Analysis of the Power of Review by Industrial Tribunals of Their Own Decisions" by J McMullen, 1984 CJQ 12.*

2. *Any formula relating to 'service' should be avoided in paragraph (1)(b),*

otherwise it could attract section 7 of the Interpretation Act and defeat an object of the paragraph: T and D Transport (Portsmouth) Ltd v Limburn *[1987] ICR 696, EAT.*

3. *In industrial tribunal cases, it has been held by the Employment Appeal Tribunal that the review procedure is available for the correction of major or minor errors and that where it is clear that the original decision could not stand and the right order was obvious, the tribunal had the power to substitute the correct order without ordering a rehearing. See* Trimble v Supertravel Ltd *[1982] ICR 440, EAT, and* Stonehill Furniture Ltd v Phillippo *[1983] ICR 556, EAT. This model rule gives effect to such decisions, but omits the provision whereby a Chairman of an industrial tribunal may refuse an application if in his opinion it has no reasonable prospect of success. However, the power to review a decision in the interests of justice may be thought to be too wide-reaching, particularly where there is an appellate tribunal. Drafting Departments and tribunals will need to give particular consideration to whether it should be included.*

4. *There is some authority that a tribunal may reopen a case in appropriate circumstances even in the absence of an express power:* R v Kensington and Chelsea Rent Tribunal ex parte Macfarlane *[1974] 1 WLR 1486; [1974] 3 All ER 390.*

E.1–11 Further consideration

Where the Tribunal has made a decision which requires or involves *the Authority* from whom the appeal was brought reconsidering the subject of the disputed decision and, following such reconsideration and any further decision by *the Authority*, a fresh appeal is made to the Tribunal by a party to the original appeal, the Tribunal shall give directions to the parties to the fresh appeal with a view to avoiding any duplication of documents or evidence produced or heard on the original appeal.

Note

The powers of a tribunal may be limited to determining whether the disputed decision was right or wrong, thus excluding the power to substitute its own decision on the merits. In such a case the matter may be returned to the relevant authority which may make a new decision which is also appealed. This model rule is designed to avoid a repetition of documentation or evidence in such cases.

E.1–12 Sanction for disregard of safeguards on confidential information

If otherwise than [with the consent in writing of .... or] for the purpose of any appeal to a Tribunal, any person to whom the Tribunal has provided any document or other information in confidence discloses such document or information or any information contained in such a document to any other person, he shall be liable, as provided in section .... of the Act, on summary conviction to a fine not exceeding the .... level on the standard scale.

Note

Provision for a penal sanction for a failure to comply with rules or directions protecting confidential information may be found in the principal legislation cf. section 28 (10) of the Betting, Gaming & Lotteries Act 1963. Alternatively, the necessary authority may be included in the rule-making power of the Act.

F.1–1 Orders for costs and expenses

(1) The Tribunal shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2), make such an order:–

(a) against a party (including a party who has withdrawn his appeal or reply) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or

(b) against *the Authority*, where it considers that the decision against which the appeal is brought was wholly unreasonable; or

(c) as respects any costs or expenses incurred, or any allowances paid, as a result of a postponement or adjournment of a hearing at the request of a party.

(2) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) may require the party against whom it is made to pay the other party or parties either a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(4) Any costs required by an order under this rule to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed in the order.

(5) In the application of paragraph (4) to Scotland, for the reference to the county court and the county court rules there shall be substituted references to the sheriff court and the sheriff court rules and for the references to proceedings there shall be substituted a reference to civil proceedings.

Notes

1. Provision for the award of costs needs to be authorised specifically in the enabling Act. Specific authority for the enforcement of an order for costs also needs to be included in the enabling Act, see e.g. paragraph 1(2)(i) and 7 of Schedule 9 to the Employment Protection (Consolidation) Act 1978. Although the Council are in favour of provision for costs being included in rules, they take the view that costs should normally only be awarded by tribunals hearing appeals or applications against decisions of administrative or regulatory authorities or tribunals established as an instrument of social

F.1–2

policy (see also note 1 to model rule B.2–2) where a party has acted frivolously or vexatiously or wholly unreasonably, or in favour of an appellant where there is a successful appeal against an administrative decision affecting the appellant's livelihood—see Annual Report 1976/77, para. 4.7 and e.g. rule 24(1)(b) of the Data Protection Tribunal Rules 1985 (S.I. 1568). Other considerations may apply where a tribunal is provided solely as an expert alternative to a court (e.g. the Copyright Tribunal or the Lands Tribunal).

2. *For recovery of costs awarded, see note 9 to model rule E.1–8.*

F.1–2 Payment of expenses

(1) The Tribunal shall make the prescribed payments in respect of expenses, allowances and fees.

(2) In this rule, "prescribed" in relation to any amount means the amount payable as determined by the Lord Chancellor from time to time with the consent of the Treasury.

Notes

1. *The Franks Committee considered that as a general principle–*

> *"a successful applicant should always be given a reasonable allowance in respect of his expenses. This is intended to include travelling and subsistence expenses, expenses of the attendance of witnesses, and allowance for loss of remunerative time, together with an allowance in respect of the cost of legal representation in cases where the tribunal is satisfied that legal representation was reasonable. This should apply to proceedings both before tribunals of first instance and before appellate tribunals. Clearly before the latter tribunals legal representation would generally be regarded as reasonable" (para. 95).*

In the event, however, legal aid is currently paid only in respect of four tribunals.

2. *Provision for expenses by the tribunal needs specific authority in the enabling Act. Where such provision is made in the Act, it would be appropriate to include a rule that payment may be made for expenses, allowances and fees, but it would be advisable for the rates of payment to be fixed—as in the model rule—in a manner which enables changes to be made in an expeditious manner.*

3. *If more detailed provision is required, see rule 27 of the Pensions Appeal Tribunals (England and Wales) Rules 1980 (S.I. 1120). Rule 31 of those Rules makes special provisions for interpreters in the Welsh language.*

F.1–3 Interest

When a decision awards a party a monetary sum (other than in respect of costs),

the award shall, unless set aside, and subject to any variation on appeal or review, carry interest at the rate of .... per cent from the date of the [decision] [*the event giving rise to the application to the Tribunal*]. Any such interest may be recovered in the same manner as the award to which it relates may be recovered. **F.1–3**

Notes

1. *It would be necessary to make express provision in the enabling Act for the payment of interest on an award and for its recovery (e.g. by execution by the county court: see the Employment Protection (Consolidation) Act 1978 (as amended), Schedule 9, paragraphs 6A and 7). For the Council on Tribunal's view on a proposal for including provision for an award of interest, see the Annual Report 1987/1988, para. 4.20.*

2. *For recovery, seen note 9 to model rule E.1–8.*

HEAD G: APPEALS FROM TRIBUNALS

Introductory Note

1. *An appeal from a tribunal (as distinct from judicial review) lies only where provided by statute and subject to the terms of the statute. Unless the appeal lies to an existing institution or authority (e.g. the High Court or a Minister), the appellate tribunal or body must be created by or under a statute. The Franks Committee considered that an "ideal appeal structure for tribunals should take the form of a general appeal [on fact, law or merits] ... to a second or appellate tribunals". "As a matter of principle ... appeal should not lie from a tribunal to a Minister". However it would not be esssential to set up an appellate tribunal when the first instance tribunal is "so exceptionally strong and well qualified that an appellate tribunal would be no better qualified to review its decisions". All decisions of tribunals should be subject to review by the courts on points of law either by appeal or, now, judicial review. See Franks Report, paras. 105–107.*

2. *There is, however, no regular appeal pattern and in various cases appeals lie first to an apellate tribunal and thence on a point of law to the courts (High Court or Court of Appeal), or direct to the High Court, or to a Minister. There may be no appeal from a first instance tribunal or no further appeal from an appellate tribunal.*

3. *Where an appeal or case stated lies to the High Court or Court of Appeal, the procedure is regulated by Orders 55 (appeal to High Court), 56 and 57 (case stated to High Court), 59 (appeal to the Court of Appeal) or 61 (case stated to Court of Appeal) of the Rules of the Supreme Court. Such an appeal or case stated is provided in respect of a number of tribunals by section 13 of TIA and in statutes establishing individual tribunals. However, the Council on Tribunals take the view that a direct appeal is to be preferred to a procedure by way of case stated; in particular it avoids the need to return to the first instance tribunal to state the case. These model rules, therefore, do not include a reference to the case stated procedure.*

4. *Where the appellate authority is other than the High Court or Court of Appeal, it will be necessary to provide rules of procedure suitable for the statutory jurisdiction of the appellate tribunal. In some cases an enabling Act contains a separate rule-making power or provides for a separate rule-making authority as regards the appellate tribunal (see paragraph 17 of Schedule 11 to the Employment Protection (Consolidation) Act 1978); in such cases the rules of the appellate tribunal will be separate from the rules of the first instance tribunal (e.g. Employment Appeal Tribunal Rules 1980 (S.I. 2035) and Social Security Commissioners Procedure Regulations 1987 (S.I. 214)). In other cases the enabling Act may confer the rule-making power on the same authority in common or similar terms as regards both first and second instance tribunal and in such cases the same rules of procedure may contain*

provisions dealing with both stages of the procedure (see the Immigration Appeals (Procedure) Rules 1984 (S.I. 2041)). In this event it would be desirable to ensure that the rules which relate to the bringing of the second appeal are sufficiently distinguished from the rules relating to the first instance proceedings so as to be easily identified by an unrepresented appellant.

5. *The model rules set out under this Head are divided into two parts:–*

Part I: contains those rules relating to an appeal which are appropriate to be contained in the rules relating to the first instance tribunal.

Part II: contains certain of the rules which are appropriate to be contained in the rules relating to the appellate tribunal. Only a limited number of rules are included; the remainder may be adapted from models set out in other Heads of this compilation. See further the Introductory Note to Part II of this Head.

PART I: RULES RELATING TO FIRST INSTANCE TRIBUNALS

G.1–1 Application for leave to appeal

(1) An application to the Tribunal for leave to appeal to *the appellate tribunal* from a decision of the Tribunal may be made:–

(a) orally at the hearing after the decision is announced by the Tribunal;

(b) in writing to *the appropriate office* not later than twenty eight days after the decision is served on the party making the application.

(2) Where an application for leave to appeal is made in writing, it shall be signed by the applicant or his representative and shall:–

(a) state the name and address of the applicant and of any representative of the applicant;

(b) identify the decision and the Tribunal to which the application relates;

(c) state the grounds on which the applicant intends to rely in his appeal.

Notes

1. *The hearing of an appeal by the appellate tribunal may be subject to the condition that the appellant first obtains leave from either the first instance tribunal or the appellate tribunal. Such a provision may be included specifically in the enabling Act rather than in a rule-making power. Where an appeal is confined to a question of law, however, the Council are of the view that it should not depend on leave to appeal being obtained.*

2. *For the purposes of the rules dealing with applications for leave to appeal the 'appellant' is referred to as the applicant.*

G.1–2 Decision by original Tribunal on application for leave to appeal

(1) An application to the Tribunal for leave to appeal may be decided by the Chairman of the Tribunal [or any other chairman of a .... Tribunal] on consideration of the application and, unless the decision is made immediately following an oral application or the Chairman considers that special circumstances render a hearing desirable, in the absence of the parties.

(2) The decision of the Tribunal on an application for leave to appeal together with the reasons refusing an application shall be recorded in writing and the Registrar shall notify the applicant [and, unless the decision is given immediately following an oral application, each of the other parties] of such decision and reasons.

(3) A notification under this rule shall, as appropriate, include a statement of any provision of the *enabling* Act relating to any further application for leave to appeal and of the time and place for making such a further application or for giving notice of appeal to *the appellate tribunal.*

Note

The refusal of an application for leave to appeal is not, in the absence of an express provision to the contrary, a decision from which an appeal lies to a higher appellate authority: Bland v Chief Supplementary Benefits Officer *[1983] 1 WLR 262; [1983] 1 All ER 537 CA; applied in* White v Chief Adjudication Officer *[1986] 2 All ER 905 CA.*

G.1–3 Correction of register

Where a correction or entry is made in the register as a consequence of a decision by *the appellate tribunal*, the Registrar shall send copies of the correction or entry to all persons to whom copies of the original entry have been sent.

PART II: RULES RELATING TO APPELLATE TRIBUNALS

Introductory Note

1. *The model rules that follow in this Part of this Head provide for different or more concise procedures before appellate tribunals than those envisaged in other Heads of this compilation for first instance tribunals. A number of the latter, however, may also be required, appropriately modified, for proceedings before appellate tribunals. As well as the rules set out below therefore, it would be necessary to consider whether any rules of the kind set out in Head H are necessary to supplement the statutory provisions establishing the appellate tribunal and the need for inclusion in the appellate tribunal's rules of rules relating to:–*

notice of hearing (model rule D.4–1);
representation (model rules B.5–7 and C.5–7);
public or private hearings (model rules E.1–2 to E.1–5);
conduct of the hearing, including evidence (model rules E.1–7, E.1–12, D.2–1(3) and D.2–2 to D.2–4);
postponement and adjournment (model rule D.4–2);
decisions (model rule E.1–8);
setting aside decisions (model rule E.1–10);
service of process (model rules D.1–2 and I.1–2);
costs and expenses (model rules F.1–1 and F.1–2).

2. *Where parties are, or are likely to be, unrepresented in cases before appellate tribunals, it is important that the latter should take similar steps as are recommended in model rule B.5–6 and the note to that rule, and to indicate at the commencement of the proceedings the procedure which will be followed by the tribunal. See the article 'Appeals from Local Valuation Courts to the Lands Tribunal' by John Baldwin and Richard Young in 1988 CJQ 343.*

G.2–1 Application to appellate tribunal for leave to appeal

(1) An application for leave to appeal against a decision of *an original tribunal* may be made to *the appellate tribunal* only where the applicant has been refused such leave by *the original tribunal.*

(2) Such an application shall be made in writing and must be received by *the office of the appellate tribunal* not later than twenty eight days after the date on which notice in writing of the refusal of leave to appeal by *the original tribunal* was served on the applicant.

(3) The application shall contain:–

(a) the name and address of the applicant;

(b) the grounds on which the applicant intends to rely in his appeal;

(c) the name and address [, and the profession,] of the representative of the applicant, if any, and whether *the appellate tribunal* should send notices concerning the appeal to the representative instead of the applicant;

(d) the date on which the applicant received notice of the decision of *the original tribunal* refusing leave to appeal,

and shall be accompanied by:–

(e) a copy of the decision against which leave to appeal is being sought;

(f) if not part of that decision, a copy of the decision of *the original tribunal* refusing leave to appeal.

(4) *The appellate tribunal* shall decide the application for leave to appeal on consideration of the applicant's application and, unless it considers that special circumstances render a hearing desirable, in the absence of the parties. The decision, together with reasons for refusing an application,

G.2–2 shall be recorded in writing and *the office of the appellate tribunal* shall notify the applicant [and each of the other parties to the proceedings before *the original tribunal*] of such decision and reasons.

(5) Where *the appellate tribunal* grants leave to appeal under this rule, the written application shall be deemed to constitute the notice of appeal and to have been received by *the appellate tribunal* on the date on which leave to appeal was granted.

Notes

1. *As regards paragraph (1), care needs to be taken that the enabling power extends to rules 'regulating the exercise of the rights of appeal' as the paragraph goes beyond regulating 'procedure'.*

2. *The refusal of an application for leave to appeal is not, in the absence of an express provision to the contrary, a decision from which an appeal lies: see note to model rule G.1–2. However, even if leave is refused, the giving of reasons is desirable to enable the applicant to understand the decision.*

3. *Additional provisions may be desirable to enable the appellate tribunal to extend time limits.*

4. *'Approved' forms are as important for appellate tribunals as they are for first instance tribunals: see notes to model rule B.1–1.*

G.2–2 Power to treat application as appeal

If on consideration of an application for leave to appeal *the appellate tribunal* is minded to grant leave, it may, after notice to and with the consent of the applicant and each respondent, treat the application as an appeal and determine any question arising on the application as though it were a question arising on an appeal [without an oral hearing].

G.2–3 Notice of appeal

1. Subject to paragraph (2) of this rule, an appeal shall be brought by a written notice to *the office of the appellate tribunal* and shall contain:–

   (a) the name and address of the appellant;

   (b) the date on which leave to appeal was granted;

   (c) the grounds on which the appellant intends to rely;

   (d) the name and address of the representative, if any, of the appellant and whether *the appellate tribunal* should send notices concerning the appeal to the representative instead of the appellant,

   and shall be accompanied by:–

   (e) a copy of the decision against which the appeal is brought; and

(f) a copy of the decision by which leave to appeal has been granted.

(2) No notice of appeal shall be necessary in a case where an application for leave to appeal has been made to, and granted by, *the appellate tribunal.*

G.2–4 Time limit for appealing

A notice of appeal shall not be valid unless it is received by *the office of the appellate tribunal* not later than twenty eight days after the date on which the appellant was given notice *by the original tribunal* in writing that leave to appeal has been granted.

Note

This provision goes to jurisdiction, but it would be desirable to provide for an extension of the time limit "if by reason of exceptional/special circumstances it is just to do so". See notes 3 to 5 to model rule H.4–1.

G.2–5 Written representations

(1) *The office of the appellate tribunal* shall send a copy of the notice of appeal (and of every application for leave to appeal which is deemed to be a notice of appeal) to every party other than the appellant and shall invite that party to inform *the appellate tribunal* whether or not he wishes to submit written representations on the appeal. Any written representations shall be delivered to *the appellate tribunal* not later than twenty-eight days after the date on which the notice of appeal was served on the party and shall include:–

(a) the party's name and address and address for service; and

(b) a statement as to whether or not he opposes the appeal; and

(c) if he opposes the appeal, the grounds upon which he proposes to rely.

(2) Any party may, not later than twenty eight days after being sent such written representations by *the appellate tribunal*, deliver to *the appellate tribunal* written representations in reply.

(3) A copy of any written representations delivered by a party in accordance with this rule shall be sent by *the office of the appellate tribunal* to the other parties.

G.2–6 Withdrawal of applications for leave to appeal and appeals

(1) At any time before it is determined, an application for leave to appeal may be withdrawn by the applicant by giving written notice to *the appellate tribunal* of his intention to do so.

G.2–7 (2) At any time before the decision is made, an appeal to *the appellate tribunal* may be withdrawn by the appellant with the leave of *the appellate tribunal.*

(3) *The appellate tribunal* may, on application by the party concerned, give leave to reinstate any application on appeal which has been withdrawn in accordance with paragraphs (1) and (2) of this rule and, on giving leave, may give such directions as to the future conduct of the proceedings as it thinks fit.

Note

Unlike an appeal or application to a first instance tribunal, which may usually be withdrawn at the instance of the appellant/applicant, it is considered that there may be reasons, whether affecting the appellant or the respondent, why an appeal to an appellate tribunal should continue. The appellate tribunal should therefore consider whether, in the circumstances, the appeal may be withdrawn. See Social Security Commissioners Decision R(1) 3/64.

G.2–7 Directions

(1) At any stage of the proceedings, *the appellate tribunal* may, either of its own motion or on the application of a party, give such directions as it may consider necessary or desirable for the just, expeditious and economical conduct of the appeal, and may:–

(a) direct any party to furnish such further particulars or to produce such documents as may reasonably be required;

(b) summon any person to attend as a witness, at such time and place as may be specified in the summons, at an oral hearing of an application for leave to appeal or of any appeal and to answer any questions or produce any documents in his custody or under his control which relate to any matter in question in the proceedings:

Provided that no person shall be required to attend in obedience to such a summons unless he has been given at least seven days notice of the hearing or, if less than seven days, has informed *the appellate tribunal* that he accepts such notice as he has been given.

(2) *The appellate tribunal* may upon the application of a person summoned as a witness under this rule set the summons aside.

(3) An application under paragraph (1) above shall be made in writing to *the appellate tribunal* and shall set out the direction which the applicant is seeking to have made and the grounds for the application.

(4) Unless *the appellate tribunal* shall otherwise determine, an application made pursuant to paragraph (3) above shall be copied by *the office of the appellate tribunal* to the other parties; and if *the appellate tribunal* considers it necessary for the determination of the application, the *tribunal* shall give the parties an opportunity of appearing before it.

Note

If provision is made for witnesses, it will be desirable to incorporate in the relevant rule the appropriate provisions of model rules D.2–1(3) and D.2–4.

G.2–8 Hearings

(1) *The appellate tribunal* may, if all the parties so agree in writing, determine an appeal without an oral hearing.

(2) Any oral hearing before *the appellate tribunal* for the determination or final disposal of an appeal, shall be in public except where *the appellate tribunal* is satisfied that intimate personal or financial circumstances may have to be disclosed or that considerations of national security are involved, in which case the hearing, or part thereof, shall be in private.

(3) If any party to whom notice of a hearing has been given in accordance with these Rules should fail to appear at the hearing, *the appellate tribunal* may, having regard to all the circumstances including any explanation offered for the absence, proceed with the case notwithstanding that party's absence, or may give such directions (including orders for the payment of costs and expenses) with a view to the determination of the case as it thinks fit.

Note

The exceptional circumstances in which an oral hearing may be held in private may be expanded or varied as appropriate. See notes to model rule E.1–2.

G.2–9 Evidence

(1) In any proceedings on an appeal, *the appellate tribunal* shall receive as evidence the summary or record taken or kept of any evidence received in the *first instance tribunal.*

(2) If any party to the appeal wishes to adduce evidence before *the appellate tribunal* further to that to be received in accordance with paragraph (1) above, he shall give notice in writing to that effect to *the appellate tribunal* indicating the nature of the evidence; and any such notice shall:–

(a) in the case of the appellant, be given with the notice of appeal or as soon as practicable after notice of appeal is given or is deemed to have been given;

(b) in the case of any other party, as soon as practicable after he has been notified of the appeal.

(3) In any proceedings on an appeal *the appellate tribunal* may:–

(a) in its discretion, receive or decline to receive such further evidence of which no such notice has been given;

G.2–9 (b) if it considers it necessary in order to enable it to arrive at a proper determination of the appeal, request and receive further evidence; and such further evidence shall be given as *the appellate tribunal* may direct, either orally or in writing.

Note

For fresh evidence, see International Aviation Services (UK) Ltd v Jones *[1979] ICR 371, EAT.*

HEAD H: THE TRIBUNAL—COMPOSITION AND GENERAL POWERS

Introductory Note

1. *The constitution, general structure and composition of tribunals will, as a rule, be a matter for the enabling Act though there are exceptions, the Valuation and Community Charge Tribunals established under the Local Government Finance Act 1988, being the most recent. The division between what appears in the Act and what should appear in the rules may well be the result of Parliamentary or professional interest in the subject matter or jurisdiction; equally it may be arbitrary. However, the following points should be noted:*

   (a) *it is usual where a presidential system*[8] *is to be established, for that to be done in the enabling Act, which will also prescribe the necessary qualifications for the President and his terms and condition of service—see Schedule 8 to the Value Added Tax Act 1983. An exception, where a presidential system is established by subordinate legislation, is to be found in regulation 3 of the Industrial Tribunals (England and Wales) Regulations 1965 (S.I. 1101) to the following effect:–*

   > *"3. (1) There shall be a President of the Industrial Tribunals (England and Wales) who shall be appointed by the Lord Chancellor and shall be a person who has a 7 year general qualification, within the meaning of section 71 of the Courts and Legal Services Act 1990.*
   >
   > *(2) The President shall hold office for five years and shall be eligible for reappointment.*
   >
   > *(3) The President may resign his office by notice in writing to the Lord Chancellor.*
   >
   > *(4) If the Lord Chancellor is satisfied that the President is incapacitated by infirmity of mind or body from discharging the duties of his office, or if the President is adjudged bankrupt or makes a composition or arrangement with his creditors, the Lord Chancellor may revoke his appointment.*
   >
   > *(5) The functions of the President under these Regulations may, if he is for any reason unable to act or during a vacancy in his office, be discharged by a person nominated for that purpose by the Lord Chancellor."*

   The Council on Tribunals recommend the establishment of a presidential system (and regional chairmen where justified by the workload) as

[8] i.e. the appointment of a single person to have administrative responsibility for a series of tribunals having the same jurisdiction as well as presiding as a chairman of a particular tribunal or sitting.

reinforcing the independence, and facilitating the administration, of a series of tribunals.

(b) It is assumed that the enabling Act will make it clear whether a tribunal is a permanent tribunal or is to be constituted ad hoc—see section 28 of the Banking Act 1987. In either case various provisions for the composition of particular tribunals or their sittings and the qualifications of the chairman and members may be included in the enabling Act: see the Value Added Tax Act 1983 and the Banking Act 1987; or they may be left to rules of procedure: see the Industrial Tribunals (England and Wales) Regulations 1965 (S.I. 1101), the Lands Tribunal Rules 1975–1981 (S.I. 1975/299 as amended) and the Vaccine Damage Payments Regulations 1979 (S.I. 432). Model rules relating to the composition and sittings of tribunals are included below: rules H.1–1 to H.1–4 are applicable to a system of tribunals with the same jurisdiction or a tribunal sitting in different divisions; rule H.1–5 to a single continuing tribunal; and rule H.2–1 to ad hoc tribunals;

(c) it is usual for the enabling Act to provide for the length of appointment of the chairman and members of the tribunal, their remuneration and the appointment and remuneration of the staff of a tribunal: see the Rent Act 1977, Schedule 10, paragraphs 7–9; the Employment Protection (Consolidation) Act 1978, Schedule 9, paragraphs 9–10; the Value Added Tax Act 1983, Schedule 8, paragraphs 2 and 7; and the Copyright, Designs and Patents Act 1988, sections 146–147. Again, the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 439), regulations 4–14, make a significant exception.

2. ***Where provisions of the kind referred to in paragraph 1 of this Note are left to rules, clear and adequate rule-making powers must be included in the enabling Act as they are not matters which fall within general words relating to practice or procedure or the exercise of the right of appeal.***

PART I: CONTINUING TRIBUNALS

H.1–1 Establishment of a number of Tribunals with the same jurisdiction/a single Tribunal which may sit in two or more divisions

Such numbers of Tribunals shall be established as the President may from time to time, with the consent of the Treasury, determine, and they shall sit at such places [and at such times] as he may from time to time determine.

[Alternative]

For the purposes of hearing and determining appeals and any matter preliminary or incidental to an appeal, the Tribunal shall sit in such places and at such times as the Chairman or a deputy chairman may direct, and may sit in two or more divisons.

1. *The first alternative in this rule is appropriate where it is proposed to establish a system of a number of tribunals each exercising the same jurisdiction. A variant of a rule for this purpose would be to establish a tribunal for each of a number of geographical or administrative regions: see section 65 of the Mental Health Act 1983 and regulation 3 of the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 439). In such a case provision may be made for the territorial jurisdiction (e.g. residence or situation of property) of the tribunal (see regulation 16 of the regulations cited above) and provision should be made for transfer between the tribunals within the same system, including, where provision is made for different structures of tribunals of the same jurisdiction in England and Wales, in Scotland and in Northern Ireland, of transfers amongst them (see model rule H.4–2 below).*

2. *The reference to the times of sitting should be omitted if there are regional chairmen who are responsible, under the President, for the administration of the tribunal system within their respective regions.*

3. *The second alternative provides for a single tribunal sitting in two or more divisions. In such a case no provision need be made for territorial jurisdiction and provision need be made for transfer only as between different tribunals of the same jurisdiction in England and Wales, in Scotland and in Northern Ireland.*

H.1–2 Panels of chairmen and members

(1) There shall be a panel of chairmen [and deputy chairmen] and [two] panel[s] of other members [for England and Wales, for Scotland and for Northern Ireland respectively] [for each region].

(2) Appointments to a panel of chairmen [and deputy chairmen] shall be made from persons who [*set out appropriate legal qualifications*]:–

(a) for England and Wales, by the Lord Chancellor;

(b) for Scotland, by the Lord President of the Court of Session;

(c) for Northern Ireland, by the Lord Chief Justice of Northern Ireland.

(3) Appointments to one panel of the other members shall be made by *the Minister* [after consultation with ....] and to the second such panel shall be made by *the Minister* [after consultation with ....].

Notes

1. *This rule envisages a comprehensive system of tribunals composed of members of different qualifications (in some instances it is important to have "expert" members) or representative of different interests. Panels may also be provided for separate regions. When there are to be separate regions with separate regional chairmen, it would be appropriate to add at the end of*

paragraph (2): "one of whom may be designated the regional chairman, and the powers of the regional chairman shall be exercised by him or by a chairman appointed by him."

2. *It has been the practice of the Council on Tribunals to follow the recommendation of the Franks Committee that tribunals should normally have legally qualified chairmen, though the Council would not exclude consideration being given to the appointment to panels of chairmen of persons who, "though lacking legal qualifications, had special experience which would qualify them for work of this kind". Chairmen of appellate tribunals should always have legal qualifications: Franks Report, para 58. Rule 8(3) of the Mental Health Review Tribunal Rules 1983 (S.I. 942) provides an additional limitation (in effect, qualification) for persons who may be chairmen in "restricted patient" cases.*

3. *In the view of the Council, chairmen should as a rule be appointed by the Lord Chancellor. See also provision for appointment by the Lord Chancellor in section 7 of TIA.*

4. *This model rule provides for central appointment of both chairmen and members (with or without consultation with professional or interested bodies). However, it is sometimes thought desirable or appropriate to provide for local appointment (even in the case of a chairman, or for election of the chairman from amongst the members). For a precedent, see regulation 8 of the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 439) and for a complex provision for panels see regulation 3 of the National Health Service (Service Committees and Tribunal) Regulations 1974 (S.I. 455 as amended by, inter alia, S.I. 1990/538).*

H.1–3 Composition of particular sittings

(1) The powers of the Tribunal may be exercised by a Chairman sitting with two other members.

(2) For each sitting of a Tribunal the Chairman shall be the President, or a person selected by the President from the [appropriate] panel of chairmen constituted in accordance with rule H.1–2(2) [*or appropriate provision of enabling Act*]; and the President or a member of the panel of chairmen authorised by the President shall select two other members, being one member from each of the panels of members constituted in accordance with rule H.1–2(3).

(3) The President or a chairman authorised by the President may at any time select from the appropriate panel another person in substitution for the Chairman or other member previously selected for any particular sitting.

Notes

1. *For a variant of paragraph (1), see paragraph 5(1) of schedule 8 to the Value Added Tax Act 1983: "A value added tax tribunal shall consist of a chairman*

sitting either with two other members or with one other member or alone." See also section 3(1) of the Lands Tribunal Act 1949.

2. *If there are regional or area panels of chairmen and members, it may be advisable (in case of a temporary shortage) to enable the selection also to be made from an appropriate panel from another region: e.g. "A member of a .... Tribunal for any region may be appointed under this rule as one of the persons to constitute a .... Tribunal for any other region for the purposes of any proceedings or class of proceedings".*

3. *Additional provisions may be considered for the selection of members of panels, e.g.*

> *"Each member of a panel (other than the panel of chairmen) shall be summoned in turn to serve upon a Tribunal";*
>
> *"If practicable, at least one of the members of the Tribunal hearing the case shall be of the same sex as the appellant."*

See also model rule H.1–4.

H.1–4 Composition of Tribunal for a particular class of case

The [*appointing authority*] shall draw up [for each Tribunal] [region] [for England and Wales, Scotland and Northern Ireland respectively] a separate panel of persons appearing to him to be [experienced] [qualified] in matters relating to .... and for each hearing of the Tribunal of an application [*concerning the specialised jurisdiction*] [under the ... Act] a person on such a panel shall be selected as a member of the Tribunal in the place of one of the persons included in the panels drawn up under rule H.1–2(3).

Notes

1. *This rule is designed for use by a tribunal which has jurisdiction in respect of a diversity of matters, one or more of which may relate to a particular speciality. In such a case it may be desirable that a person experienced in that special field should be a member of the tribunal.*

2. *A similar provision is to appoint permanently or semi-permanently appropriately qualified members for a particular class of cases. If that is done model rule H.1–3(2) would need to be modified to the following effect:*

> *"Unless the appeal belongs to a class or group of proceedings for which members have already been appointed, the members of the Tribunal who are to hear the appeal shall be appointed by the Chairman from the relevant panels."*

H.1–5 Composition of a single continuing tribunal

(1) The Tribunal shall consist of a Chairman and two other members.

H.2–1 (2) The Chairman shall be a person who [*appropriate legal qualification*] appointed by the Lord Chancellor and the members shall be appointed by *the Minister* after consultation with .....

(3) The Lord Chancellor or *the Minister*, as the case may be, may at any time appoint for a particular sitting another person in substitution for the Chairman or other member previously appointed.

Note

Where it is desired to have a more extensive membership for a single tribunal which does not sit in divisions, rules H.1–2 and H.1–3 may be adapted.

PART II: AD HOC TRIBUNALS

H.2–1 Establishment of the Tribunal

(1) On receipt of a notice of appeal, the ..... shall forthwith request [*the appointing authorities*] respectively to appoint a Chairman and two other members of the Tribunal in accordance with [section = of the Act and] [this rule] to hear the appeal.

(2) The Chairman shall be a person who [*appropriate legal qualification*] appointed by ..... and the other members shall be [*appropriate qualifications, if any*] appointed by .....

Notes

1. *See also model rule D.1–4. However, if the tribunal is unlikely to be involved frequently, there may be no registrar, and the appeal may have to be made in the first instance to an administrative authority which will seek the appointment of the tribunal. Paragraph (2) may be necessary to supplement the provisions of the enabling Act, cf. sections 46 and 47 of the Building Societies Act 1986 and the regulations made under it, 1987 (S.I. 891). It may also be necessary to provide for staff of an ad hoc tribunal, e.g.*

   "( ) The ..... shall appoint such persons as may be necessary to act as Registrar and other members of the staff of the Tribunal for the purposes of the appeal."

2. *Consideration may also be given to the establishment of panels of persons who may be appointed as occasion requires as chairmen and members of an ad hoc tribunal:*

   "(1) There shall be a panel of not less than ten persons to serve as members of the Tribunal when nominated to do so, and that panel shall consist of–

(a) persons with legal qualifications appointed by the Lord Chancellor who shall be eligible to be nominated as chairmen; and

(b) other persons appointed by the Secretary of State who appear to him to be qualified to deal with cases which may be heard by the Tribunal.

(2) On receipt of a notice of appeal, the ..... shall request [the appointing authority] to nominate a Chairman and two other members from the panel to serve as members of the Tribunal for that appeal."

PART III: ALL TRIBUNALS

H.3–1 Disqualification

Without prejudice to the application of any rule of natural justice, a person shall not act as member of a Tribunal in considering any case referred to it if he:

(a) [is a medical practitioner who has regularly attended the disabled person or whose opinion has been sought on any matter in connection with the case;]

(b) [is a member or officer of the authority whose decision is being appealed against].

Notes

1. *No specific rule is necessary to provide against self-interest or bias (or suspected bias) on the part of a member of a tribunal: see* Metropolitan Properties Co (FGC) Ltd v Lannon and Ors *[1969] 1 QB 577; [1968] 3 All ER 304, CA and* University of Swansea v Cornelius *[1988] ICR 735, EAT. Specific provision may, however, be necessary or desirable where there are only a limited number of persons qualified for a particular category of membership of a tribunal (see Vaccine Damage Payments Regulations 1979 (S.I. 432) and Mental Health Review Tribunal Rules 1983 (S.I. 942)) or where it is necessary to extend the range of disqualifying interests (regulation 23 of the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 439).*

2. *For a wider range of disqualification (bankruptcy etc), see section 146 of the Copyright, Designs and Patents Act 1988 and regulation 9 of the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 439).*

H.3–2 Absence of member of Tribunal

If, after the commencement of any hearing, a member other than the Chairman is absent, the appeal may, with the consent of the [appellant] [parties], be heard

H.3–3 by the other two members and, in that event, the Tribunal shall be deemed to be properly constituted.

[Alternative]

Any case may, with the consent of the [appellant] [parties], be proceeded with in the absence of any one member other than the Chairman.

[Further Alternative]

A ..... Tribunal shall not determine any question unless all members are present and, if any member is absent, the matter shall be referred to another such Tribunal.

Notes

1. *It is desirable in most cases to provide for possible absences of members of the tribunal. However, particular consideration should be given to such a provision where the tribunal is intended to be representative of different disciplines and interests if the absence of any such discipline or interest would be of particular significance. In such a case, the further alternative above may be justified.*

2. *If either of the first two alternatives is adopted, it would be as well to include in any acknowledgement of a notice of hearing an item in which an appellant/party may give his consent.*

H.3–3 Assessors

Where in the case of any proceedings it is provided by the *enabling* Act for one or more assessors to be appointed, the President or a Chairman may, if he thinks fit, appoint a person or persons having special knowledge or experience in relation to the subject matter of the appeal to sit with the Tribunal as assessor or assessors.

Notes

1. *As to the function and participation of an assessor, and the distinction between an assessor and an expert witness, see* R v Deputy Industrial Injuries Commissioner, ex parte Jones *[1962] 2 QB 677; [1962] 2 All ER 430.*

2. *If the enabling Act provides for assessors, the necessary financial provision should be made for fees.*

H.3–4 Registrar/Secretary/Clerk

Any functions of the Registrar may be performed by an Assistant Registrar of [the Tribunal] [Tribunals] or, save as regards the functions referred to in [rules

D.1–7, D.2–1 or D.3–2], by some other member of the staff of the Tribunal authorised for the purpose by the [President] [a chairman] [the Registrar].

Notes

1. *In these model rules, the title 'Registrar' is used throughout and irrespective of the function conferred, be it the registration of appeals and decisions or the preparation of the hearing. Other titles than Registrar may be used—e.g. Secretary or Clerk—for the principal administrator of a tribunal or series of tribunals of the same jurisdiction and a distinction may be made between such a principal administrator and his senior staff (Registrar and Assistant Registrar; Secretary and Deputy Secretary) and those whose main function is to act as clerk for particular sittings. The expression 'appropriate officer' has been used to embrace all levels of the staff, but, as with this model rule, some provision needs to be made for providing which member of staff is to perform which function.*

2. *Consideration needs to be given to the extent, if any, to which functions in interlocutory proceedings are to be conferred on a Registrar. Such functions should only be conferred when it is intended that those who will be appointed to that office will be suitably qualified or experienced.*

3. *Similar considerations apply as regards the delegation of functions to other members of the staff of a tribunal. The model permits only a limited delegation as regards interlocutory proceedings.*

4. *Although it is more usual for provision for the appointment of the staff of a tribunal to be made in the enabling Act itself, it may be left to subordinate legislation. This may be most appropriate where a series of tribunals serve a local government function—see regulations 11 to 14 of the Valuation and Community Charge Tribunals Regulations 1989 (S.I. 439), which also include provision for administration.*

H.3–5 The register

The register shall be kept at the [principal] office of the Tribunal(s) and shall be open to the inspection of any person without charge at all reasonable hours.

Note

This model rule is designed to serve a similar purpose to model rule E.1–9 in providing public awareness of and access to the decisions of tribunals.

PART IV: MISCELLANEOUS POWERS OF TRIBUNALS

H.4–1 Miscellaneous powers of Tribunal

(1) Subject to the provisions of the Act and these Rules, a Tribunal may regulate its own procedure.

H.4–1 (2) A Tribunal may, if it thinks fit:–

(a) extend the time appointed by or under the Act for bringing an appeal or by or under these Rules for doing any act notwithstanding that the time appointed may have expired;

(b) postpone the time or change the place fixed for any hearing or adjourn any hearing;

(c) if the appellant shall at any time give notice of the withdrawal of his appeal, dismiss the proceedings;

(d) if both or all the parties agree in writing upon the terms of a decision to be made by the Tribunal, decide accordingly (and, in making any such decision, it shall not be necessary for the Tribunal to give reasons);

(e) subject to the proviso below, at any stage of the proceedings order to be struck out or amended any notice or statement of grounds of appeal, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious;

(f) subject to the proviso below, order to be struck out any appeal for want of prosecution:

Provided that before making any order under sub-paragraphs (e) or (f) above, the Tribunal shall send notice to the party against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made.

Notes

1. *This model rule gathers together a number of powers, some of which are also included in earlier model rules. The powers in paragraph (2) may be exercised either by the tribunal of its own motion or on application by a party.*

2. *Paragraph (1): it has been held that an industrial tribunal may under such a rule transfer a case for rehearing by another industrial tribunal:* Charman v Palmers Scaffolding Ltd *[1979] ICR 335, EAT; and that it has an inherent power to refer a case to a differently constituted tribunal if the result in the first is likely to be ineffectual or inconclusive:* R v Industrial Tribunal Ex p. Cotswold Collotype Co. Ltd *[1979] ICR 190, DC. It would however be preferable to include an express power to transfer cases—see model rule H.4–2.*

3. *Paragraph (2)(a): if time for bringing an appeal is limited by the Act, an express provision for extending that time period will be necessary in the rule-making power of the Act.*

4. *Paragraph (2)(a): it may be desired to limit the power to extend time. A possible formulation would be to insert, after the word "extend", the following, "if by reason of [exceptional] [special] circumstances, it is just to do so". Even in such a case, however, the courts may well take a liberal attitude*

to a tribunal's power to extend time: Mehta v Secretary of State for Home Department *[1975] 1 WLR 1087; [1975] 2 All ER 1084, CA.*

5. *Paragraph (2)(a): the Employment Appeal Tribunal have held that an application for extension of time to an industrial tribunal could be made after the decision but "there must inevitably be a very heavy burden on a respondent ... to justify the application":* St. Mungo Community Trust v Colleano *[1980] ICR 254, EAT.*

6. *Paragraph (2)(f): an appeal or application may be filed to prevent time limits expiring in order to preserve the possibility of recourse to the tribunal after proceedings in another forum (e.g. the High Court) have been concluded. For a ruling by the Employment Appeal Tribunal in such a case, see* Warnock v Scarborough Football Club *[1989] 1 ICR 489.*

7. *Paragraph (2)(f): a warning against delay was given by the Employment Appeal Tribunal in* O'Shea v Immediate Sound Services *[1986] ICR 598, EAT: "Any suggestion that the sort of periods of time which obtain in the High Court before cases are struck out for want of prosecution can apply in industrial tribunals needs to be corrected. Industrial tribunals should be swift; in fact they usually are; and if applicants or their advisers think that the leisurely approach to litigation which obtains in the High Court can happily go on before industrial tribunals, they should be disabused now". But see* Kelly v Ingersoll-Rand Co. Ltd *[1982] ICR 476, EAT.*

H.4–2 Power to transfer cases

A ..... Tribunal may transfer any proceedings before it to another ..... Tribunal, [including a ..... Tribunal established under the ..... (Scotland) Rules, 19..] and any such Tribunal to which proceedings are transferred under this rule [or the equivalent provisions of the ..... (Scotland) Rules 19..] shall have jurisdiction to hear and determine the same [and an appeal shall lie from any such determination] as if the proceedings were properly commenced therein in accordance with these Rules.

Notes

1. *Such a provision should be included where a system of tribunals having the same jurisdiction is established. The first passage in square brackets is intended to enable transfers to take place notwithstanding that the tribunals in England and Wales and those in Scotland are established under different rules. Similar provision may be made, as necessary, as respects Northern Ireland.*

2. *The latter part of this model rule is designed to avoid any lack of jurisdiction or restriction which follows from a system which establishes tribunals on a geographical basis. See also the definitions 'appropriate tribunal centre' and 'tribunal' in model rule I.1–5.*

H.4–3 Reference by a technical Tribunal to an appellate Tribunal of a question of law

(1) Where any question of law arises in a case before a ..... Tribunal and the Tribunal decides to refer that question to *the appellate tribunal* for its decision in accordance with section ... of the Act, the Tribunal shall cause to be sent to *the appellate tribunal* and to every party to the proceedings, a submission in writing signed by the Chairman of the Tribunal, which shall include a statement of the question and the facts on which it arises.

(2) If the case is remitted to the ..... Tribunal following a reference to *the appellate tribunal*, the ..... Tribunal, whether or not consisting of the same members who constituted the ..... Tribunal when the reference was made–

(a) shall proceed upon the facts stated in the submission made to *the appellate tribunal*; and

(b) may receive such further evidence and find such further facts as, having regard to the decision of *the appellate tribunal*, is necessary for the purpose of giving its decision on the case.

Note

Such a rule may be considered where a technical tribunal is constituted with an appeal to a tribunal more suited to determine questions of law. Appropriate provision would be required supplemental to Head G, Part II to provide for the appeal tribunal deciding the point of law and remitting the case with its decision to the first instance tribunal.

H.4–4 Investigatory Tribunals: appointment of solicitors and counsel; methods of inquiry

(1) At any time after the case has been referred to it, the Tribunal may appoint the Treasury Solicitor and Counsel, or, in Scottish cases, may request the Treasury Solicitor to appoint a solicitor and may appoint Counsel to exercise the functions of:–

(a) assisting the Tribunal in seeking and presenting evidence in accordance with the requirements of the Tribunal; and

(b) representing the public interest in relation to the matters before the Tribunal.

(2) As soon as practicable after the Tribunal has considered the subject matter of the investigation, it shall notify *the Authority* and the applicant of the manner in which it proposes to conduct its inquiries and in particular whether oral evidence is to be taken.

(3) The Tribunal shall give *the Authority* and the applicant a reasonable opportunity of making representations on the manner in which it proposes

to conduct its inquiries and such representations may be made orally or in writing at the option of *the Authority* or the applicant as the case may be.

(4) After considering any representations that may be made under paragraph (3) above, the Tribunal shall notify *the Authority* and the applicant whether and, if so, in what respects, it has decided to alter the manner in which it proposes to carry out its inquiries.

(5) If at any subsequent stage in the investigation the Tribunal proposes to make any material change in the manner in which its inquiries are to be carried out, it shall notify *the Authority* and the applicant and the provisions of paragraphs (3) and (4) above shall apply accordingly.

(6) After the Tribunal has completed the taking of evidence as it considers necessary for the purpose of the investigation, it shall give the applicant and *the Authority* a reasonable opportunity of making representations on the evidence and on the subject matter of the investigation generally. Such representations may be made orally or in writing at the option of the applicant or, as the case may be, of *the Authority*.

Notes

1. *Tribunals established for the purpose of making inquiries may require the assistance of solicitors and counsel and may have to adopt different procedures for different cases. This model rule is based on rules 4, 6 and 8 of the Insolvency Practitioners Tribunal (Conduct of Investigations) Rules 1986 (S.I. 952) to which further reference should be made.*

2. *For a provision whereby a "nominated" solicitor is charged with the presentation of a case against a medical practitioner before a tribunal, see rule 3 of the Misuse of Drugs Tribunal (England and Wales) Rules 1974 (S.I. 85).*

H.4–5 Irregularities

(1) Any irregularity resulting from failure to comply with any provision of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and shall if it considers that any person may have been prejudiced by that irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the Chairman or Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the Chairman by certificate under his hand.

Note

This rule goes to procedural and clerical defects, not to matters of substance which can only be corrected by an appellate body or, subject to the relevant conditions, on review. Where there is power to correct an error, it should not be exercised in a case which affects the interests of a party without giving that party an opportunity to be heard: Times Newspapers Ltd v Fitt *[1981] ICR 637, EAT.*

H.4–6 Power of Chairman to exercise powers of Tribunal etc.

(1) Any act required or authorised by these Rules other than the decision of an appeal (not being a decision on an unopposed appeal) or the making of an order disposing of the appeal following a review under rule E.1–10 may be done by [the President or] the Chairman of the Tribunal [or any chairman being a member of the panel of chairmen]:

> [Provided that where an order is made by [the President or] a chairman under paragraph (2)(e) or (2)(f) of rule H.4–1, it shall not have effect unless it is confirmed by the Tribunal.]

(2) In the event of the death or incapacity of the Chairman following the decision of the Tribunal in any matter, the functions of the chairman for the completion of the proceedings, including any review of the decision, may be exercised by any other chairman or person acting as chairman of [the Tribunal] [a Tribunal of like jurisdiction].

Note

The purpose of paragraph (1) of this rule is to provide for the expeditious and economical disposal of interlocutory proceedings and unopposed appeals and applications.

Introductory Note

This Head contains model rules on the proof of documents and certification of decisions, service of documents and definitions. Some of these are frequently included at the commencement of rules. However, it is considered that, in order to avoid confusing or distracting appellants/applicants who are not represented, it would be desirable to include them, as in statutes, at the end.

This Head also includes a rule on the application of the Arbitration Act 1950 to proceedings before tribunals and a note on references to the Court of Justice of the Communities under Article 177 of the Treaty of Rome.

I.1–1 Proof of documents and certification of decisions

(1) Any document purporting to be a document duly executed or issued by ..... on behalf of the Tribunal shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the Registrar to be a true copy of any entry of a decision in the register shall, unless the contrary is proved, be sufficient evidence of the entry and of the matters contained therein.

I.1–2 Method of sending, delivering or serving documents etc.

(1) Any document or thing required or authorised by these Rules to be sent or delivered to, or served on, any person shall be duly sent, delivered or served on that person:–

(a) if it is sent to him at his proper address by post in a registered letter or by recorded delivery;

(b) if it is sent to him at that address by telex or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form;

(c) if it is delivered to him or left at his proper address.

(2) If a notice of appeal is sent by registered post or recorded delivery, it shall be treated as if it had been received at *the appropriate office* on the date on which it is received for despatch by the Post Office.

(3) The proper address for the Registrar or the Tribunal is the address of *the appropriate office* of the Tribunal.

I.1–2 (4) Any document or thing required or authorised to be sent or delivered to, or served on, an incorporated company or body shall be duly sent, delivered or served if sent or delivered to or served on the secretary or clerk of the company or body.

(5) The proper address of any person to or on whom any document or thing is to be sent, delivered or served shall, in the case of a secretary or clerk of any incorporated company or body, be that of the registered or principal office of the company or body and, in any other case, be the last known address of the person in question.

Notes

1. *This rule deals with sending or delivering documents or other things as well as service. The former expressions are used in the earlier parts of this compilation, which are more particularly addressed to the parties, as being less technical than "service" and "served".*

2. *In the case of an appeal, provision is made not only that the appeal shall be sent or delivered to the tribunal, but that it shall be received at the appropriate office of the tribunal within a specific period. Compliance with that provision is especially significant where the jurisdiction of the tribunal depends on the appeal being received in time. The time factor may also be significant for originating applications. It may be helpful, therefore, especially where the limitation period is short, to provide that receipt by a Post Office of an appeal/application to be sent by registered post or recorded delivery is to be treated as receipt at the appropriate office of the tribunal. In such cases, a note to that effect should appear on any approved form of notice of appeal or application and consideration should be given to including paragraph (2) of this model rule in model rules B.1–1 and B.2–1.*

3. *An additional provision which may be appropriate when documents or other things which may be sent, delivered or served are of a particular character so that specialist carriers are employed is as follows:–*

> *"Any notice, application or other document sent to the Registrar from a place in the United Kingdom by means of a postal or other delivery service (whether provided by the Post Office or otherwise) which is certified by the Registrar for the purpose of this paragraph shall be deemed to have been given, made or filed at the time when it (or the letter containing it) was accepted by the person providing the service for delivery to the appropriate office.*
>
> *The Registrar shall only certify a service for the purpose of this paragraph if that service both certifies the date on which an item is accepted for delivery and, at the time of delivery, informs the person to whom it is delivered that the date has been certified and what that date is, but the Registrar shall not be obliged to certify a service which satisfies these criteria. In respect of any particular notice, application or other document a service shall be regarded as certified by the Registrar if a certificate of the Registrar was subsisting at the time at which the said notice, application or other document was accepted by the person providing the service, for delivery at the appropriate office."*

I.1–3 Substituted service

If any person to or on whom any document is required to be sent, delivered or served for the purpose of these Rules cannot be found or has died and has no known personal representative, or is out of the United Kingdom, or if for any other reason service on him cannot be readily effected, the Chairman may dispense with service on such person or may make an order for substituted service on such other person or in such other form (whether by advertisement in a newspaper or otherwise) as the Chairman may think fit.

I.1–4 Arbitration

(1) Where it is so agreed in writing between the persons who, if a question were to be the subject of an appeal to a Tribunal, would be the parties to the appeal, the Tribunal shall act as an arbitrator on that question.

(2) Section 31 of the Arbitration Act 1950 shall have effect for the purposes of the referral of a question in pursuance of this rule as if such referral were to arbitration under another Act within the meaning of that section.

(3) In any arbitration in pursuance of this rule the award may include any order which could have been made by a Tribunal in relation to the question.

Notes

1. *The enabling Act may provide that in certain cases a tribunal may act as an arbitrator or that the parties may consent to the tribunal determining a question as an arbitrator. The model rule applies in the latter circumstance.*

2. *In either event it may be desirable to select those provisions of the Arbitration Act 1950 which should apply to such an arbitration. Section 3(8) of the Lands Tribunal Act 1949, for instance, provides:–*

   > *"Where the Lands Tribunal acts as arbitrator, the [provisions of Arbitration Act 1950] shall apply only so far as they are applied by rules made under this section".*

   The current rule made for that purpose is as follows:–

   > *"Sections 12, 14, 17, 18 (5), 20 (subject to any enactment which prescribes a rate of interest) and 26 of the Arbitration Act 1950 shall apply to all proceedings as they apply to an arbitration unless a contrary intention is expressed in the arbitration agreement, and, where the Tribunal is acting as arbitrator under a reference by consent, sections 1, 2, 3, 4 (1), 5, 18 (3) and (4), 24 (2) and (3) and 27 of the Arbitration Act 1950 shall also apply".*

I.1–5 Interpretation

Introductory Note

Model rules can only make limited provision for definitions since the latter are likely to be particularly dependant on the particular jurisdiction of the tribunal. In

I.1–5 *providing definitions regard should be had to section 11 of the Interpretation Act 1978 which provides that expressions used in subordinate legislation have, unless the contrary intention appears, the meanings which they bear in the Act. However, it may be appropriate in certain cases to repeat a definition contained in the enabling Act in order to provide a more complete picture in the rules (see paragraph 12 of the General Introduction to these model rules). In adapting earlier precedents, regard should also be had to section 23 of the Interpretation Act 1978 which applies certain other provisions of that Act to subordinate legislation.*

The following common form definitions and general provisions may be of assistance.

(a) Definitions

"the Act" means the [*enabling Act or Acts conferring jurisdiction*] Act 19..;

Note

If two or more Acts are relevant, it may be convenient to differentiate them by some short description e.g. "the Employment Act" or the "1989 Act".

"appellant" means

(i) a person who makes an appeal to the Tribunal under section ..... of the Act, and includes a legal personal representative of a person entitled to bring such an appeal or a person appointed under rule B.4–1 or B.4–2 to institute or proceed with the appeal on behalf of a person entitled to bring such an appeal;

(ii) in the case of an appeal to *the appellate tribunal* against the decision of the Tribunal, the person or the Authority by whom that appeal is brought;

Note

Element (ii) will be appropriate both for 'appeals rules' and for 'applications rules'.

"applicant" means

(i) a person who makes an application to the Tribunal under section ..... of the Act, and includes a legal personal representative of a person entitled to make such an application or person appointed under rule B.4–1 or B.4–2 to proceed with the application on behalf of a person entitled to make such an application;

(ii) in relation to an application in interlocutory proceedings, or for leave to appeal to *the appellate tribunal*, the applicant in those proceedings;

Note

Element (ii) will be appropriate both for 'applications rules' and for 'appeals rules'.

["appropriate tribunal centre"] ["local office of the tribunal"] means the office of the Tribunal established for the area in which [the appellant resides] [the land which is the subject of the application, or the greater part thereof, is situated], and includes, when an appeal is transferred from one Tribunal to another, the office of the latter;

Note

Such a provision will be desirable if there are a number of tribunals each with its own territorial or other separate jurisdiction. See also the definition of "Tribunal".

"approved form"	means a form approved by, or under the authority of, the President;
"the Authority"	means.....
"Chairman"	means the Chairman of the Tribunal, or a person nominated or appointed to act as chairman at any hearing [and, includes in the absence or inability to act of the Chairman, [the President or] any member of the panel of chairmen];
"decision"	(except in the expression "disputed decision") means a decision of the Tribunal for the determination of the appeal/application or of any substantive issue that arises therein, but does not include any directions in interlocutory proceedings;
"direction"	means any order or other determination by a Tribunal other than a decision, and in relation to interlocutory proceedings includes an order and a witness summons;
"disputed decision"	means a decision of *the Authority* against which an appeal is brought under these Rules;
"hearing"	means a sitting of the Tribunal for the purpose of enabling the Tribunal to reach or announce a decision other than such a sitting in exercise of the power to determine an appeal without an oral hearing;
"originating application"	means an application to the Tribunal under rule B.2–1;

I.1–5	"party"	*in appeals rules* includes the appellant, the Authority and any person joined to the proceedings as a respondent;
	"party"	*in applications rules* includes the applicant, and, subject to rules C.2–1 (4) and C.4–3, any person or Authority named or joined to the proceedings as a respondent;
	"pre-hearing review"	means a review of the [appeal] [application] as provided in rule D.3–2 in preparation for a hearing;
	"the President"	means the President of the ..... Tribunals;
	"register"	means the register of [appeals]/[applications] and decisions kept in accordance with these Rules;
	"Registrar"	means the person for the time being acting as Registrar of [the Tribunal] [Tribunals established by section ..... of the Act], and includes any Assistant Registrar or other member of the staff of the Tribunal authorised to perform the relevant function or exercise the relevant power as provided by rule H.3–4];
	"reply"	means a reply by a respondent as provided in Head C of these Rules;
	"respondent"	means [the Authority or any other] [a] party to the proceedings before the Tribunal other than the [appellant] [applicant];
	"Tribunal"	means a ..... Tribunal and "the Tribunal" means the ..... Tribunal to which an appeal is made or transferred;
		[*Alternative*]
	"the Tribunal"	means the ..... Tribunal [for the area in which the appellant/applicant resides] [for the area in which the land which is the subject of the application, or the greater part thereof, is situated] [appointed by the President/Chairman for the hearing of [appeals] [applications] of that category coming from the relevant area], or such other Tribunal to which the [appeal] [application] may be transferred.
	"appellate tribunal"	means the ..... established by section ..... of the Act.

Note

Any second instance tribunal should be referred to by a name easily distinguishable from the first instance tribunal.

( ) In these Rules, any reference to a rule or a schedule is a reference to a rule or schedule contained herein.

( ) Where the time prescribed by these Rules for doing any act expires on a Sunday or public holiday, the act shall be in time if done on the next following day which is not a Sunday or public holiday.

I.1–6 Reference to the Court of Justice of the European Communities

Note

Article 177 of the European Economic Community Treaty (the Treaty of Rome) sets out the jurisdiction of the Court of Justice of the Communities and provides for reference to the Court by national courts and tribunals as follows:–

> *"The Court of Justice shall have jurisdiction to give preliminary rulings concerning:*
>
> *(a) the interpretation of this Treaty;*
>
> *(b) the validity and interpretation of acts of the institutions of the Community;*
>
> *(c) the interpretation of the statutes of bodies established by an act of the Council, where those statutes so provide.*
>
> *Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon.*
>
> *Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice."*

Provisions for references to the Court of Justice are also made in Article 150 of the Treaty establishing the European Atomic Energy Community and Article 41 of the Treaty establishing the European Coal and Steel Community.

Certain tribunals (e.g. the Value Added Tax Tribunals) may exercise a jurisdiction which may give rise to a request for a reference to the Court of Justice. Guidance as to the formulation of a reference is to be found in Holdijk *(a reference from the Kantongerecht, Apeldorn) [1982] ECR 1299. The relevant Order for the High Court is to be found in the Supreme Court Practice, R.S.C. Order 114.*

ANNEX A

CHECKLIST OF MATTERS TO BE CONSIDERED WHEN PREPARING LEGISLATION ESTABLISHING A TRIBUNAL OR OTHER ADJUDICATIVE BODY

1. This Annex lists common form elements relating to the establishment, functioning and procedure of tribunals and other bodies with adjudicative functions. It is divided for convenience into two parts; part A lists those matters which in many cases are to be found substantively in the principal legislation; part B lists those matters which are frequently the subject of rule-making powers. There is no hard and fast practice as to whether matters fall into part A or part B. There is a great variety of practice in particular as to which elements of items A1 and A4 are included in the principal legislation and which fall within a rule-making power. There are, for example, precedents for the establishment of tribunals to be effected under a rule-making power (see Schedule 11 to the Local Government Finance Act 1988, which provides for the establishment of valuation and community charge tribunals) though it is more usual for provision to be made in the principal legislation itself for a nationwide system of tribunals the members of which are to be centrally appointed. The checklist should therefore be looked at, and used, as a whole and decisions taken as to the placing of the various elements according to the requirements of the particular subject matter of a tribunal's jurisdiction, the political interest in particular issues and the need to respond to that interest.

2. Even where matters are to be left to a rule-making power, the principal legislation may be drafted in such a way as to require the power, or jurisdiction conferred under the power, to be exercised in a particular way. See section 22(3) and (5) of the Immigration Act 1971:

> "(3) The rules of procedure shall provide that any appellant shall have the right to be legally represented."
>
> "(5) If under the rules of procedure leave to appeal to the Tribunal is required in [*certain cases*], then the authority having power to grant leave to appeal shall grant it" [*in stated circumstances*].

It is also usual to provide for the making of procedural rules to be subject to the negative resolution procedure.

A. MATTERS CUSTOMARILY INCLUDED IN THE PRINCIPAL LEGISLATION (EITHER THE ACT ITSELF OR A SCHEDULE)

1. Establishment of Tribunal

(a) The establishment of the tribunal or other adjudicative body:

— as a single continuing body, whether or not sitting in one or more divisions

— as a number of tribunals having the same jurisdiction

— as an ad hoc tribunal.

(b) Provision for a tribunal to hear appeals from the tribunal of first instance:

— appeal on law and fact or on law only.

(c) Finality of decision of a tribunal.

(d) Appeal to the courts (High Court or Court of Appeal) on question of law and fact or on law only from original or appellate tribunal; power of tribunal to refer question of law to the courts.

(e) Alternatively, further procedure involving a minister. (The Council on Tribunals consider that a tribunal should be empowered to reach a binding decision rather than a recommendation).

2. Jurisdiction and principal powers

(a) Which issues may be referred to the tribunal (in the case of appeals from administrative authorities, which decisions may be appealed).

(b) The persons eligible to appeal or apply to the first instance tribunal; the persons eligible to appeal to an appellate tribunal or from a tribunal to a court.

(c) The respondent and third parties.

(d) Time limits for appealing or applying. Do they go to the jurisdiction of the tribunal (e.g. "an appeal shall only be entertained by the Tribunal") or are they procedural? In either event, should provision be made for the tribunal to extend time limits?

(e) The powers of the first instance tribunal on an appeal or application; rehearing or decision on correctness in the case of an appeal; original decision in case of an application. Can the tribunal vary, as distinct from dismiss an appeal or quash, an administrative decision? Provision for requiring administrative authority to reconsider the matter in the light of a decision to quash. Other limitations on powers of the tribunal.

(f) Powers of the tribunal to make investigations and to appoint counsel and solicitors to assist it.

(g) The powers of the appellate tribunal.

3. Restrictions on rights to appeal/apply; consequences of appealing/making application

(a) Prior conditions for appealing/making an application.

(b) Provision for suspension of an administrative decision—automatically or at discretion of tribunal.

(c) Other interim relief.

4. Composition of Tribunal (see also item 1(a) above)

(a) Presidential system.

(b) Chairmen, regional chairmen—panels; deputy-chairmen.

(c) Members—different categories of members—panels.

(d) Appointment, qualifications, tenure, removal, remuneration (including superannuation of full-time appointees) of President, chairmen and members; ignoring defects in appointments.

(e) Disqualifications, exemptions (e.g. disqualifications by interest, House of Commons Disqualification Act; exemption from jury service).

(f) Composition of tribunal for hearings; quorum including power of legally qualified chairmen to sit alone and absence of a member; majority for, and casting votes on, decisions.

(g) Provision for the composition of the tribunal in special cases or when exercising a special jurisdiction.

(h) Provision for transfer of cases between tribunals having the same jurisdiction.

(i) Similar considerations in respect of the appellate tribunal.

5. Staff

(a) Staff.

(b) Who provides the staff.

(c) Provision for remuneration and superannuation.

6. Finance

(a) Who provides for the costs and expenses of the various tribunals. Fees for experts, inspectors, assessors.

(b) Provision for accounting for receipts.

(c) Provision for legal aid or other assistance for appellants/applicants.

7. Conciliation

8. Tribunal as arbitrator

9. Provision for notification, when communicating administrative decisions, or proposals to make such decisions, when they adversely affect interests

10. Penal sanctions for failure to comply with procedural requirements

— failure to produce documents or make them available for inspection or copying; failure to provide information sought by a tribunal in exercise of an investigatory power

— suppressing or destroying material

— failure to attend as a witness

— obstruction of right of entry or inspection

— failure to observe confidentiality.

11. Enforcement of awards of Tribunals by other bodies such as the county court

12. Council on Tribunals

Are the tribunals/adjudicative bodies to be placed under the supervision of the Council on Tribunals (Schedule to Tribunals and Inquiries Act 1971)?

13. Variations in respect of Scotland and Northern Ireland

(a) Extension/restriction of jurisdiction in Scotland and Northern Ireland.

(b) Separate tribunal/series of tribunals.

(c) Separate Presidential/administrative system.

(d) Separate rule-making powers.

(e) Variations in procedure.

B. MATTERS FOR CONSIDERATION FOR INCLUSION IN RULE-MAKING POWERS

1. Matters relating to the establishment, composition and sittings of the Tribunals (which, apart from subhead (b) below, should be explicitly provided for in the rule-making power).

(a) Any matters referred to in items A1 to A6 not provided for in the principal legislation. (This may be particularly relevant where some authority other than the central government is to be responsible for establishing or providing for the composition or appointment of a

tribunal or tribunals—see Schedule 11 to the Local Government Finance Act 1988 for the extensive provision that it may be prudent to make in such a case).

(b) Place and time of sittings of a tribunal.

(c) Transfer of cases.

(d) Assessors.

2. General provision for practice and procedure

(a) Rules for regulating the exercise of the rights of appeal.

(b) Rules for regulating practice and procedure (Schedule 3 to the Data Protection Act 1984 uses both forms: "... may make rules for regulating the exercise of the rights of appeal conferred by section 13 of this Act and the practice and procedure of the Tribunal").

3. Specific matters which may be the subject of rules expanding ("without prejudice to the generality of") a general provision such as item 2 above. Those items marked with an asterisk in particular are likely to fall outside any general provision and, if required, should be expressly mentioned.

(a) **Time**

Provision with respect to the time within which an appeal/application may be brought and for extending any such time * including, where necessary, any period prescribed by the principal legislation.

(b) **Parties**

— who may apply, agents, representatives of persons under a disability

— provision relating to who or what Authority or person may/must be joined as a respondent

— third parties

— succession on death.

(c) **Preliminary questions**

* — whether any matter may be determined by arbitration, the parties to the arbitration and the application of provisions of the Arbitration Act 1950

* — powers to suspend administrative decisions against which an appeal is brought

* — other interim relief.

(d) **Evidence**

— power of tribunal to decide what evidence it will require, burden of proof

— provision for securing documentary evidence and witnesses—inspection—copying—oaths and affirmations

* — power for tribunal or experts to enter on land and buildings to inspect

— medical examinations.

*(e) **Penal sanctions for failure to comply with procedural requirements**

— any matters referred to in item A10 not provided for in the principal legislation

— requirement to state penalties in directions, orders, summonses, etc.

(f) **Appearance/representation**

— restrictions on presence of a party at certain part of hearing

— representatives of parties—restriction on representation.

(g) **Hearing**

— power to determine procedure

— hearings to be public—power to hold hearings or hear particular issues or evidence in private

— presence of member of Council onTribunals at hearings

— power to determine particular appeals/applications/issues without an oral hearing

— consolidation of appeals/applications; test cases.

(h) **Decisions**

— reasons for decisions

— power to review decisions

— registration of decisions

* — Proof of decisions.

(i) **Powers of Chairmen**

* — to exercise powers of tribunal in preliminary, incidental or uncontested matters

— to correct errors.

*(j) **Delegation of powers of Tribunal to Registrar and powers of Registrar to staff**

*(k) **Fees, Costs, etc.**

— Fees

— Costs, taxation, enforceability in county court

— Expenses.

*(l) **Awards**

— enforcement in county court

— interest.

(m) **Publicity**

— advertisement of applications

— notice of hearings

— notice of decisions

— access of public to register of applications and decisions

— publication of reports.

(n) **Notices**

— service of documents.

(o) **Ancillary provision**

"for conferring on the Tribunal such ancillary powers as the [*rule-making authority*] thinks necessary for the proper discharge of its functions".

For examples of a number of such provisions see, in addition to section 22 of the Immigration Act 1971 and Schedule 11 of the Local Government Finance Act 1988 quoted above, the following enactments:–

Section 3 of the Lands Tribunal Act 1949;

Schedule 9 to the Employment Protection (Consolidation) Act 1978;

Schedule 8 to the Value Added Tax Act 1983; and sections 27 to 29 of the Finance Act 1985;

Schedule 3 to the Data Protection Act 1984;

Section 48 of the Building Societies Act 1986;

Section 30 of the Banking Act 1987

Sections 145 to 151 of the Copyright, Designs and Patents Act 1988;

Schedule 6 to the Courts and Legal Services Act 1990.

ILLUSTRATIVE BASIC RULES

SECTION 1: APPEAL RULES

(For the purposes of these rules, it is assumed that full provision for the establishment of a series of tribunals with the same jurisdiction, and for the composition of the panels from which members of the tribunals are to be drawn for particular sittings, is made in the enabling Act).

THE ..... TRIBUNALS (PROCEDURE) RULES 19.....

Made .....
Laid before Parliament .....
Coming into force .....

ARRANGEMENT OF RULES

Rule		Page
1.	Citation and commencement	119

PART I: MAKING AN APPEAL TO THE TRIBUNAL AND REPLY BY THE AUTHORITY

(A) THE APPELLANT

2.	Notice of appeal	119
3.	Application for extension of time	120
4.	Amendment of appeal and delivery of supplementary grounds of appeal	120
5.	Application for directions	121
6.	Withdrawal of appeal	121
7.	Action of appellant on receipt of notice of hearing	121
8.	Representation at hearing	121

(B) THE REPLY BY THE AUTHORITY

9.	Action by the Authority on receipt of notice of appeal	122
10.	Amendment of reply and application for directions by the Authority	122

11. Failure to reply and absence of opposition 123
12. Representation at, and action of the Authority on notification of, hearing 123

PART II: ADDITIONAL PARTIES

13. Notification to third parties 123
14. Addition of new parties to the proceedings 124

PART III: PREPARATION FOR A HEARING

15. Acknowledgement and registration of appeal and service of documents by Registrar 124
16. Directions in preparation for a hearing 125
17. Particulars and supplementary statements 125
18. Disclosure of documents and other material 126
19. Summoning of witnesses 126
20. Failure to comply with certain directions 126
21. Varying or setting aside of directions 126
22. Notice of time and place of hearing, and adjournments 127
23. Public notice of hearings 127

PART IV: THE DETERMINATION OF APPEALS

24. Power to determine an appeal without a hearing 127
25. Hearings to be in public: exceptions 128
26. Failure of parties to attend hearing 128
27. Procedure at hearing 129
28. Decision of Tribunal 129
29. Review of Tribunal's decision 130
30. Order for costs and expenses 131

PART V: ADDITIONAL POWERS OF, AND PROVISIONS RELATING TO THE COMPOSITION OF, THE TRIBUNAL

(A) POWERS

31. Power to grant interim relief 132
32. Power to transfer cases 132
33. Miscellaneous powers of Tribunal 132
34. Irregularities 133
35. Payment of expenses 133

(B) COMPOSITION OF THE TRIBUNAL

36. Composition of particular sittings 133
37. Absence of member of Tribunal 134

38. Power of Chairman to exercise powers of Tribunal etc. 134
39. The Registrar 134
40. The register and publication of decisions 135

PART VI: MISCELLANEOUS AND INTERPRETATION

41. Proof of documents and certification of decisions 135
42. Method of sending, delivering or serving documents, etc. 135
43. Substituted service 136
44. Interpretation 136
45. Time 137

The Secretary of State, in exercise of the powers conferred on him by section ..... of the ..... Act 19.... and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971, hereby makes the following Rules:–

Citation and commencement

1. These Rules may be cited as the ..... Tribunals (Procedure) Rules 19.... They shall come into force on ..... 19....

PART I: MAKING AN APPEAL TO THE TRIBUNAL AND REPLY BY THE AUTHORITY

(A) THE APPELLANT

Notice of appeal

2. (1) An appeal to the ..... Tribunal shall be made by written notice. An approved form which may be used for making an appeal may be obtained from the offices of [*the relevant department*] or the appropriate office of the Tribunal. If a copy of the approved form is not for any reason available, the notice of appeal may be in such form as the Tribunal may accept.

(2) The notice of appeal shall state:–

(a) the name and address of the person making the appeal (who is referred to in these Rules as "the appellant");

(b) that the notice is a notice of appeal;

(c) the date and any reference number of the decision against which the appeal is brought (here referred to as "the disputed decision"),

and the name and address of the Authority from which the disputed decision was received;

(d) the grounds of the appeal;

(e) the name and address [, and the profession,] of the representative of the appellant (if any) and whether the Tribunal should send replies or notices concerning the appeal to the representative instead of the appellant.

(3) The appellant may include in his notice of appeal a request that the disputed decision shall be suspended until the appeal has been decided.

(4) The appellant shall attach to the notice of appeal a copy of the disputed decision.

(5) The appellant or his representative shall sign the notice of appeal.

(6) The appellant must send or deliver the notice of appeal to the Registrar of the Tribunal at the appropriate office of the Tribunal so that it is received at the appropriate office not later than twenty eight days after the date on which the disputed decision against which he appeals was given to or served upon the appellant.

(7) The Registrar will acknowledge the receipt of the notice of appeal and will inform the appellant or his representative of any further steps which he must take to enable the Tribunal to decide the appeal, and the time and place of the hearing of the appeal.

Application for extension of time

3. Notwithstanding paragraph (6) of rule 2, where the appellant considers it likely that, by reason of exceptional circumstances, a notice of appeal will be received at the appropriate office later than twenty eight days after the date on which he was given or served with the disputed decision, he may include with his notice of appeal a statement of the reasons on which he relies for justifying the delay, and the Tribunal shall treat any such statement of reasons for delay as a request for extending the time limit.

Amendment of appeal and delivery of supplementary grounds of appeal

4. (1) The appellant may, at any time before he is notified of the date of the hearing of the appeal, amend his notice of appeal or deliver a supplementary statement of grounds of appeal.

(2) The appellant may amend any notice of appeal or supplementary statement with the leave of the Tribunal at any time after he has been notified of the date of the hearing of the appeal or at the hearing itself. The Tribunal may grant such leave on such terms as it thinks fit, including the payment of costs or expenses.

(3) The appellant shall send a copy of every amendment and supplementary statement to the Registrar.

Application for directions

5. The appellant may apply to the Tribunal to give directions as to any matter relating to the hearing of his appeal. An application for directions shall be made in writing to the Registrar at the appropriate office with sufficient copies to enable the Registrar to serve a copy on each of the other parties.

Withdrawal of appeal

6. The appellant may:–

(a) at any time before the hearing of the appeal withdraw his appeal by sending to the appropriate office a notice stating he withdraws his appeal signed by him or his representative;

(b) at the hearing of the appeal, with the leave of the Tribunal, withdraw his appeal.

Action of appellant on receipt of notice of hearing

7. (1) The Registrar will serve on the appellant a notice informing him of the time and place of any oral hearing which is to be held which, unless the parties otherwise agree, shall not be earlier than twenty one days after the date on which the notice is sent. Such notice will include, in a form approved by the President of the Tribunal, guidance regarding the rules of evidence and procedure which apply to the hearing.

(2) When he receives the notice of the time and place of hearing, the appellant shall inform the Tribunal whether or not he intends to attend or be represented at the hearing and whether or not he intends to call witnesses.

(3) If the appellant does not intend to attend or be represented at the hearing, he may send to the Registrar additional written representations in support of his appeal.

Representation at hearing

8. At the hearing of an appeal, the appellant may conduct his case himself (with assistance from any person if he wishes) or may appear and be represented by any person whether or not legally qualified:–

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent the appellant at the hearing.

(B) THE REPLY BY THE AUTHORITY

Action by the Authority on receipt of a notice of appeal

9. (1) An Authority which receives a copy of a notice of appeal shall deliver to the Registrar a written reply acknowledging service upon it of the notice of appeal and stating:–

(a) whether or not the Authority intends to oppose the appeal and the grounds on which it relies in opposing the appeal;

(b) the name and address [and the profession] of the representative of the Authority and whether such address is the address for service of the Authority for the purposes of the appeal;

(c) if in the opinion of the Authority any other person has a direct interest in the subject matter of the appeal, the name and address of such other person.

(2) The authority shall include with its reply a statement summarising the facts relating to the disputed decision and, if they are not part of that decision, the reasons therefor [together with copies of the documents set out in Schedule ..... to these Rules], and shall deliver to the Registrar a sufficient number of additional copies of the reply and such other documents to enable the Registrar to provide a copy of each of them to the appellant and any other person named by the Authority as having a direct interest in the subject matter of the appeal.

(3) Every such reply shall be signed by an officer of the Authority who is authorised to sign such documents and shall be delivered at the appropriate office not later than twenty one days after the date on which the copy of the notice of appeal was received by the Authority from the Registrar.

(4) The Authority may include in its reply, or in a separate notice to the Tribunal:–

(a) a request for further particulars of the appeal;

(b) a request for a determination of any question as a preliminary issue.

(5) The provisions of paragraph (3) of rule 15 shall apply in relation to any document required to be included with the reply.

Amendment of reply and application for directions by the Authority

10. (1) The Authority may at any time before it is notified of the date of the hearing of the appeal amend its reply or deliver a supplementary statement by way of reply.

(2) The Authority may amend any reply or supplementary statement with

the leave of the Tribunal at any time after it has been notified of the date of the hearing of the appeal or at the hearing itself. The Tribunal may grant such leave on such terms as it thinks fit, including the payment of costs or expenses.

(3) The Authority may apply to the Tribunal to give directions as to any matter relating to the hearing of the appeal.

(4) The Authority shall send a copy of every amendment and supplementary statement to the Registrar.

Failure to reply and absence of opposition

11. If no reply is received by the Registrar within the time appointed by rule 9 or any extension of time allowed by the Tribunal, or if the Authority states in writing that it does not resist the appeal, or withdraws its opposition to the appeal, and in any such case there is no other opposition to the appeal, the Tribunal may determine the appeal on the basis of the notice of appeal without a hearing.

Representation at, and action of the Authority on notification of, hearing

12. (1) At the hearing of an appeal, the Authority may be represented by counsel or a solicitor or by an official of the ..... Department.

(2) When it receives a notice of the time and place of the hearing of the appeal, the Authority shall inform the Tribunal whether or not it intends to attend or be represented at the hearing, and whether or not it intends to call witnesses.

(3) If the Authority does not intend to attend or be represented at the hearing, it may send to the Registrar additional written representations in support of its reply.

PART II: ADDITIONAL PARTIES

Notification to third parties

13. Upon receiving a notice of appeal or of a reply in which any person other than the appellant or the Authority is named as [having a direct interest] [having participated in proceedings before the Authority which led to the disputed decision], the Registrar shall immediately send to such person copies of the notice of appeal and reply, together with such information as is appropriate to the case about the method of such other person applying to be made a party to the proceedings as a respondent and delivering a reply and the availability of advice in relation to the appeal from the offices of the Tribunal and the Citizens Advice Bureau.

14. If it appears to the Tribunal, whether on the application of a party or otherwise, that it is desirable that any person be made a party to the proceedings, the Tribunal may order such person to be joined as a respondent and may give such directions relating thereto as may be just, including directions as to the delivery and service of documents.

PART III: PREPARATION FOR A HEARING

Acknowledgement and registration of appeal and service of documents by Registrar

15. (1) Upon receiving a notice of appeal the Registrar shall:

(a) send to the appellant an acknowledgement of its receipt, which shall include a notification that advice in relation to the proceedings may be obtained from the offices of the Tribunal and the Citizens Advice Bureau; and

(b) enter particulars of it in the register, and shall inform the parties in writing of the case number of the appeal entered in the register (which shall thereafter constitute the title of the proceedings) and of the address to which notices and other communications to the Tribunal shall be sent.

(2) Subject to paragraph (3), the Registrar shall forthwith serve a copy of a notice of appeal and of any reply, together with any amendments or supplementary statements, written representations or other documents received from a party, on all the other parties to the proceedings and, if any person or authority is subsequently joined as a party, upon that person or authority:

Provided that if any such matter is sent or delivered to the Registrar after the time prescribed by these Rules, the Registrar shall defer the service of such copies pending a decision by the Tribunal for the extension of the time limit.

(3) If any document referred to in paragraph (2) contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence, or considerations of national security are involved, and for that reason a party seeks to restrict its disclosure, he shall inform the Registrar of that fact and of his reasons for seeking such a restriction. In any such case, the Registrar shall serve the copies as provided in this rule only in accordance with the directions of the Tribunal.

16. (1) The Tribunal may at any time, on the application of a party or of its own motion, give such directions (including the issue of a witness summons) as are provided in this Part of these Rules to enable the parties to prepare for the hearing or to assist the Tribunal to determine the issues:

Provided that:–

(a) no person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce on a trial of an action in a court of law in that part of the United Kingdom where the appeal is determined; and

(b) in exercising the powers conferred by this rule, the Tribunal shall take into account the need to protect any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence or concerns national security.

(2) An application by a party for directions shall be made in writing to the Registrar and, unless it is accompanied by the written consent of all the parties, shall be served by the Registrar on any other party who might be affected by such directions. If any such other party objects to the directions sought, the Tribunal shall consider the objection and, if it considers it necessary for the determination of the application, shall give the parties an opportunity of appearing before it.

(3) Directions containing a requirement under this Part of these Rules shall, as appropriate:–

(a) include a statement of the possible consequences for the appeal, as provided by rule 20, of a party's failure to comply with the requirement within the time allowed by the Tribunal;

(b) contain a reference to the fact that, under section ..... of the Act, any other person who without reasonable excuse fails to comply with the directions shall be liable on summary conviction to a fine not exceeding the ..... level on the standard scale and, in the case of a witness summons, shall, unless the application for the summons was made in the presence of the person to whom the summons is addressed, contain a statement to the effect that that person may apply to the Tribunal under rule 21 to vary or set aside the summons.

Particulars and supplementary statements

17. The Tribunal may give directions requiring any party to provide such particulars or supplementary statements as may be reasonably required for the determination of the appeal.

18. The Tribunal may give directions requiring a party to deliver to the Tribunal any document or other material which the Tribunal may require and which it is in the power of that party to deliver. The Tribunal shall make such provision as it thinks necessary to supply copies of any document obtained under this rule to the other parties to the proceedings, and it shall be a condition of such supply that a party shall use such a document only for the purposes of the appeal.

Summoning of witnesses

19. The Tribunal may by summons require any person in the United Kingdom to attend as a witness at a hearing of an appeal at such time and place as may be specified in the summons and, subject to the proviso to paragraph (1) of rule 16, at the hearing to answer any questions or produce any documents or other material in his custody or under his control which relate to any matter in question in the appeal:

Provided that:–

(a) no person shall be required to attend in obedience to such a summons unless he has been given at least seven days' notice of the hearing or, if less than seven days, he has informed the Tribunal that he accepts such notice as he has been given; and

(b) no person, other than the appellant or a respondent, shall be required in obedience to such a summons to attend and give evidence or to produce any document unless the necessary expenses of his attendance are paid or tendered to him.

Failure to comply with certain directions

20. If any directions given to a party under this Part of these Rules are not complied with by such a party, the Tribunal may, before or at the hearing, dismiss the whole or part of the appeal or, as the case may be, strike out the whole or part of a respondent's reply and, where appropriate, direct that a respondent shall be debarred from contesting the appeal altogether:

Provided that a Tribunal shall not so dismiss or strike out or give such a direction unless it has sent notice to the party who has not complied with the direction giving him an opportunity to show cause why it should not do so.

Varying or setting aside of directions

21. Where a person to whom a direction (including any summons) issued under this Part of these Rules is addressed had no opportunity of objecting to the making of such direction, he may apply to the Tribunal to vary it or set it

aside, but the Tribunal shall not so do without first notifying the person who applied for the directions and considering any representations made by him.

Notice of place and time of hearing

22. (1) The Registrar shall, with due regard to the convenience of the parties, fix the time and place of the oral hearing and, not less than twenty one days before the date so fixed (or such shorter time as the parties agree), send to each party a notice of the hearing at such time and place.

(2) The Registrar shall include in or with the notice of hearing:

(a) information and guidance, in a form approved by [the President of] the Tribunal, as to attendance at the hearing of the parties and witnesses, the bringing of documents, and the right of representation by another person;

(b) a statement of the right of the parties to ask for and to receive reasons in writing for a decision of the Tribunal;

(c) a statement explaining the possible consequences of non-attendance and of the right of an appellant, and of any respondent who has presented a reply, who does not attend and is not represented, to make representations in writing.

(3) The Tribunal may alter the time and place of any oral hearing and the Registrar shall give the parties not less than seven days (or such shorter time as the parties agree) notice of any such alteration:

Provided that any altered hearing date shall not (unless the parties agree) be before the date notified under paragraph (1) of this rule.

(4) The Tribunal may from time to time adjourn the oral hearing and, if the time and place of the adjourned hearing are announced before the adjournment, no further notice shall be required.

Public notice of hearings

23. The Registrar shall provide for public inspection at the principal office of the Tribunal a list of all appeals for which an oral hearing is to be held and of the time and place fixed for the hearing.

PART IV: DETERMINATION OF APPEALS

Power to determine an appeal without a hearing

24. (1) The Tribunal may:–

(a) if all the parties so agree in writing; or

(b) in the circumstances described in rule 11,

determine an appeal, or any particular issue, without an oral hearing.

(2) The provisions of paragraph (2) of rule 26 and of paragraph (5) of rule 27 shall apply in respect of the determination of an appeal, or any particular issue, under this rule.

Hearings to be in public: exceptions

25. (1) All hearings by the Tribunal shall be in public except where the Tribunal is satisfied that, by reason of the disclosure of [.....] [matters concerning national security], it is just and reasonable for the hearing or any part thereof to be in private.

(2) The following persons shall be entitled to attend the hearing of an appeal, whether or not it is in private:–

(a) the President or any Chairman or member of the Tribunal notwithstanding that they do not constitute the Tribunal for the purpose of the hearing;

(b) a member of the Council on Tribunals or of the Scottish Committee of that Council.

(3) The Tribunal, with the consent of the parties, may permit any other person to attend the hearing of an appeal which is held in private.

(4) Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

Failure of parties to attend hearing

26. (1) If a party fails to attend or be represented at a hearing of which he has been duly notified, the Tribunal may:–

(a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or

(b) adjourn the hearing;

and may make such order as to costs and expenses as it thinks fit.

(2) Before deciding to dispose of any appeal in the absence of a party, the Tribunal shall consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.

(3) Where an appellant has failed to attend a hearing of which he was duly notified, and the Tribunal has disposed of the appeal, no fresh appeal may be made by the appellant to a Tribunal against the same disputed decision without the prior leave of the Tribunal:

Provided that nothing in this paragraph shall preclude the appellant making an application for a review of the Tribunal's decision under rule 29.

Procedure at hearing

27. (1) At the beginning of the hearing the Chairman shall explain the order of proceeding which the Tribunal proposes to adopt.

(2) Subject to this rule, the Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings.

(3) The parties shall be heard in such order as the Tribunal shall determine. They shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Tribunal both on the evidence and generally on the subject matter of the appeal.

(4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or written statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any deponent or maker of a written statement.

(5) The Tribunal may receive evidence of any fact which appears to the Tribunal to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(6) At any hearing the Tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to rely on grounds not stated in his notice of appeal or, as the case may be, his reply and to adduce any evidence not presented to the Authority before or at the time it took the disputed decision.

(7) A Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decision of Tribunal

28. (1) A decision of a Tribunal may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority:

Provided that where the Tribunal is constituted by two members, the Chairman shall have a second or casting vote.

(2) The decision of a Tribunal may be given orally at the end of the hearing or reserved and, in any event, whether there has been a hearing or not, shall be recorded forthwith in a document which, save in the case of a decision by consent, shall also contain a statement of the reasons (in summary form) for its decision, and shall be signed and dated by the Chairman.

(3) Subject to paragraph (4), every document referred to in this rule shall, as soon as may be, be entered in the register and the Registrar shall send a copy of the entry to each party.

(4) Where any such document refers to any evidence that has been heard in private, only a summary of the document, omitting such material, shall be entered in the register as the Tribunal may direct, but copies of the complete document shall be sent to the parties together with a copy of the entry.

(5) Every copy of an entry sent to the parties under this rule shall be accompanied by a notification of any provision of the Act relating to appeals from the Tribunal and of the time within which and place at which such appeal or any application for leave to appeal shall be made.

(6) Except where a decision is announced at the end of the hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent to the appellant.

(7) Any sum payable in pursuance of a decision shall, if a county court so orders, be recoverable by execution issued from a county court.

Review of Tribunal's decision

29. (1) If, on the application of a party or of its own motion, a Tribunal is satisfied that:–

(a) its decision was wrongly made as a result of an error on the part of the Tribunal staff; or

(b) a party, who was entitled to be heard at a hearing but failed to appear or be represented, had good and sufficient reason for failing to appear; or

(c) new evidence has become available since the conclusion of the hearing to which the decision relates the existence of which could not have been reasonably known of or foreseen; or

(d) the interests of justice require,

the Tribunal may review and, by certificate under the Chairman's hand, set aside or vary the relevant decision.

(2) An application for the purposes of paragraph (1) of this rule may be made immediately following the decision at the hearing. If an application is not made at the hearing, it shall be made to the Registrar not later than fourteen days after the date on which the decision was sent to the parties, and shall be in writing stating the grounds in full. When the Tribunal proposes to review its decision of its own motion, it shall serve notice of that proposal on the parties within the same period.

(3) The parties shall have an opportunity to be heard on any application or proposal for review under this rule and the review shall be determined by the Tribunal which decided the case or, where it is not practicable for it to be heard by that Tribunal, by a Tribunal appointed by the President; and if, having reviewed the decision, the decision is set aside, the Tribunal shall substitute such decision as it thinks fit or order a rehearing before either the same or a differently constituted Tribunal.

(4) The certificate of the Chairman as to the setting aside or variation of the Tribunal's decision under this rule shall be sent to the Registrar and the Registrar shall immediately make such correction as may be necessary in the register and shall send a copy of the entry so corrected to each of the parties.

Orders for costs and expenses

30. (1) The Tribunal shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2), make such an order:–

(a) against a party (including a party which has withdrawn his appeal or reply) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or

(b) against the Authority, where it considers that the decision against which the appeal is brought was wholly unreasonable; or

(c) as respects any costs or expenses incurred, or any allowances paid, as a result of a postponement or adjournment of a hearing at the request of a party.

(2) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) may require the party against whom it is made to pay the other party or parties either a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(4) Any costs required by an order under this rule to be taxed may be taxed

in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed in the order.

PART V: ADDITIONAL POWERS OF, AND PROVISIONS RELATING TO, THE TRIBUNAL

(A) POWERS

Power to grant interim relief

31. On an application under section ..... of the Act for the suspension of the disputed decision pending the determination of the appeal, the Tribunal may:–

    (a) make such temporary order for suspension of the disputed decision for a period not exceeding ..... days; and

    (b) after giving the parties an opportunity to make representations in writing or, if it thinks fit, orally, extend such order with such variations as it may from time to time think appropriate until the determination of the appeal.

Power to transfer cases

32. A Tribunal may transfer any proceedings before it to another Tribunal, [including a ..... Tribunal established under the ..... (Scotland) Rules, 19.....] and any Tribunal to which proceedings are transferred under this rule [or the equivalent provision of the ..... (Scotland) Rules 19.....] shall have jurisdiction to hear and determine the same as if the proceedings were properly commenced therein in accordance with these Rules.

Miscellaneous powers of Tribunal

33. (1) Subject to the provisions of the Act and these Rules, a Tribunal may regulate its own procedure.

    (2) A Tribunal may, if it thinks fit:–

        (a) extend the time appointed by or under the Act for bringing an appeal or by or under these Rules for doing any act, notwithstanding that the time appointed may have expired;

        (b) if the appellant shall at any time give notice of the withdrawal of his appeal, dismiss the proceedings;

        (c) if both or all the parties agree in writing upon the terms of a

decision to be made by the Tribunal, decide accordingly (and in making any such decision, it shall not be necessary for the Tribunal to give reasons);

(d) subject to the proviso below, at any stage of the proceedings order to be struck out or amended any notice, reply, supplementary statement or written representation on the grounds that it is scandalous, frivolous or vexatious;

(e) subject to the proviso below, order to be struck out any appeal for want of prosecution:

Provided that before making any order under sub-paragraphs (d) or (e) above, the Tribunal shall send notice to the party against whom it is proposed that any such order should be made giving him an opportunity to show cause why such an order should not be made.

Irregularities

34. (1) Any irregularity resulting from failure to comply with any provisions of these Rules or of any direction of the Tribunal before the Tribunal has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the Tribunal, the Tribunal may, and shall if it considers that any person may have been prejudiced by the irregularity, give such directions as it thinks just before reaching its decision to cure or waive the irregularity.

(3) Clerical mistakes in any document recording a direction or decision of the Chairman or Tribunal, or errors arising in such a document from an accidental slip or omission, may be corrected by the Chairman by certificate under his hand.

Payment of expenses

35. (1) The Tribunal shall make the prescribed payments in respect of expenses, allowances and fees.

(2) In this rule, "prescribed" in relation to any amount means the amount payable as determined by the Lord Chancellor from time to time with the consent of the Treasury.

(B) COMPOSITION OF THE TRIBUNAL

Composition of particular sittings

36. (1) The powers of the Tribunal may be exercised by a Chairman sitting with two other members.

(2) For each sitting of a Tribunal the Chairman shall be the President or a person selected by the President from the panel of chairmen constituted in accordance with [*the appropriate provision of the enabling Act*]; and the President or a member of the panel of chairmen authorised by the President shall select two other members, being one member from each of the panels of members constituted in accordance with [*the appropriate provision of the enabling Act*].

(3) The President or a Chairman authorised by the President may at any time select from the appropriate panel another person in substitution for the Chairman or other member previously selected for any particular sitting.

Absence of member of Tribunal

37. If, after the commencement of any hearing, a member other than the Chairman is absent, the appeal may, with the consent of the parties, be heard by the other two members and, in that event, the Tribunal shall be deemed to be properly constituted.

Power of Chairman to exercise powers of Tribunal

38. (1) Any act required or authorised by these Rules other than the decision of an appeal (not being a decision on an unopposed appeal) or the making of an order disposing of the appeal following a review under rule 29 may be done by the President or the Chairman of the Tribunal [or any chairman being a member of the panel of chairmen]:

Provided that where an order is made by the President or a chairman under paragraph (2) (d) or (2) (e) of rule 33, it shall not have effect unless it is confirmed by the Tribunal.

(2) In the event of the death or incapacity of the Chairman following the decision of the Tribunal in any matter, the functions of the chairman for the completion of the proceedings, including any review of the decision, may be exercised by any other chairman or person acting as chairman of a Tribunal of like jurisdiction.

The Registrar

39. Any functions of the Registrar, may be performed by an Assistant Registrar of Tribunals or by some other member of the staff of the Tribunal authorised for the purpose by the President.

The register and publication of decisions

40. (1) The register shall be kept at the principal office of the Tribunal and shall be open to the inspection of any person without charge at all reasonable hours.

(2) The Tribunal may make arrangements for the publication of its decisions as it considers appropriate, but in doing so shall have regard to the need to preserve the confidentiality of any evidence heard in private and for that purpose may make any necessary amendments to the text of a decision.

PART VI: MISCELLANEOUS AND INTERPRETATION

Proof of documents and certification of decisions

41. (1) Any document purporting to be a document duly executed or issued by the Registrar on behalf of the Tribunal shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

(2) A document purporting to be certified by the Registrar to be a true copy of any entry of a decision in the register shall, unless the contrary is proved, be sufficient evidence of the entry and of matters contained therein.

Method of sending, delivering or serving documents, etc.

42. (1) Any document required or authorised by these Rules to be sent or delivered to, or served on, any person shall be duly sent, delivered or served on that person:–

(a) if it is sent to him at his proper address by post in a registered letter or by recorded delivery;

(b) if it is sent to him at that address by telex or other similar means which produce a document containing a text of the communication, in which event the document shall be regarded as sent when it is received in a legible form;

(c) if it is delivered to him or left at his address.

(2) If a notice of appeal is sent by registered post or recorded delivery, it shall be treated as if it had been received at the appropriate office on the date on which it is received for despatch by the Post Office.

(3) The proper address for the Registrar or the Tribunal is the address of the appropriate office of the Tribunal.

(4) Any document required or authorised to be sent or delivered to, or served on, an incorporated company or body shall be duly sent, delivered or served if sent or delivered to or served on the secretary or clerk of the company or body.

(5) The proper address of any person to or on whom any such document is to be sent, delivered or served shall, in the case of a secretary or clerk of any incorporated company or body, be that of the registered or principal office of the company or body and, in any other case, be the last known address of the person in question.

Substituted service

43. If any person to or on whom any document is required to be sent, delivered or served for the purpose of these Rules cannot be found or has died and has no known personal representative, or is out of the United Kingdom, or if for any other reason service on him cannot be readily effected, the Chairman may dispense with service on such person or may make an order for substituted service on such other person in such other form (whether by advertisement in a newspaper or otherwise) as the Chairman may think fit.

Interpretation

44. In these Rules, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them, that is to say:–

"the Act"	means the [*enabling Act conferring jurisdiction*] Act 19....;
"appellant"	means a person who makes an appeal to the ..... Tribunal under section .... of the Act, and includes a legal personal representative of a person entitled to bring such an appeal;
"appropriate office"	means the office of the Tribunal established for the area in which the appellant resides and includes, when an appeal is transferred from one Tribunal to another, the office of the latter;
"approved form"	means a form approved by, or under the authority of, the President;
"the Authority"	means.....
"Chairman"	means the Chairman of the Tribunal, or a person nominated or appointed to act as Chairman at any hearing [and includes, in the absence or inability to act of the Chairman, the President or any member of the panel of chairmen appointed under section .... of the Act];
"decision"	(except in the expression "disputed decision")

	means a decision of the Tribunal for the determination of the appeal or of any substantive issue that arises therein, but does not include any directions in interlocutory proceedings;
"direction"	means any order or determination by a Tribunal other than a decision and in relation to interlocutory proceedings including a witness summons;
"disputed decision"	means a decision of the Authority against which an appeal is brought under these Rules;
"hearing"	means a sitting of the Tribunal for the purpose of enabling the Tribunal to reach or announce a decision, other than such a sitting in exercise of the power to determine an appeal without an oral hearing;
"party"	includes the appellant, the Authority and any person joined to the proceedings as a respondent;
"register"	means the register of appeals and decisions kept in accordance with these Rules;
"Registrar"	means the person for the time being acting as Registrar of Tribunals established by section .... of the Act and includes any Assistant Registrar or other member of the staff of the Tribunal authorised to perform the relevant function or exercise the relevant power as provided by rule 39;
"respondent"	includes the Authority or any other party to the proceedings before the Tribunal other than the appellant;
"Tribunal"	means a ..... Tribunal and "the Tribunal" means the ..... Tribunal to which an appeal is made or transferred.

Time

45. Where the time prescribed by these Rules for doing any act expires on a Sunday or public holiday, the act shall be in time if done on the next following day which is not a Sunday or public holiday.

SECTION 2: VARIATIONS FOR APPLICATION RULES

(The rules in this Section of this Annex would replace Parts I and II of the Appeals Rules set out in Section 1 of the Annex, together with certain definitions in rule 44 of the Appeals Rules, in the case of a tribunal established for party and party

proceedings. The remainder of the Appeals Rules are equally applicable to party and party proceedings with minimal changes (principally substituting 'applicant', 'application' and 'originating application' for respectively 'appellant', 'appeal' and 'notice of appeal').)

ARRANGEMENT OF RULES

PART I: MAKING AN APPLICATION TO THE TRIBUNAL AND REPLY BY THE RESPONDENT

(A) THE APPLICANT

		Page
2.	Application to the Tribunal	139
3.	Time limit for making applications: extension of time	140
4.	Documents and other material to accompany originating application	140
5.	Fee for originating application	141
6.	Amendment of originating application and delivery of supplementary statement	141
7.	Application for directions	141
8.	Withdrawal of application	141
9.	Action of applicant on receipt of notice of hearing	141
10.	Representation at hearing	142

(B) THE REPLY BY THE RESPONDENT

11.	Action by respondent on receipt of originating application	142
12.	Documents and other material to accompany reply	143
13.	Amendment of reply and delivery of supplementary statement	143
14.	Application for directions	144
15.	Failure to reply and absence of opposition	144
16.	Action of respondent on receipt of notice of hearing	144
17.	Representation at hearing	144

PART II: ADDITIONAL PARTIES

18.	Notification to third parties	145
19.	Addition of new parties to the proceedings	145

44. Interpretation 145

PART I: MAKING AN APPLICATION TO THE TRIBUNAL AND REPLY BY THE RESPONDENT

(A) THE APPLICANT

Application to the Tribunal

2. (1) An application to the ..... Tribunal under section .... of the ..... Act for [*state purpose of the application*] shall be made in writing. An approved form which may be used for making an application may be obtained from the appropriate office of the Tribunal. If a copy of the approved form is not for any reason available, the application may be in such form as the Tribunal may accept.

(2) The application shall state:–

(a) the name and address of the person making the application (who is referred to in these Rules as "the applicant");

(b) the names and address or addresses of the person(s) or authority against whom [the application is brought] [relief is sought];

(c) the address and description of the [*property/land*] which is the subject of the application;

(d) [the claim of the applicant and the grounds on which it is made] [the grounds on which relief is claimed];

(e) the name and address, [and the profession], of the representative of the applicant (if any) and whether the Tribunal should send replies or notices concerning the application to the representative instead of to the applicant.

(3) The applicant or his representative shall sign the application.

(4) The applicant shall send or deliver the application to the Registrar of the Tribunal at the appropriate office of the Tribunal.

(5) The Registrar will acknowledge the receipt of the application and will inform the applicant or his representative of any further steps which he must take to enable the Tribunal to decide the application and the time and place of the hearing of the application.

(6) An application made under this rule is referred to as an "originating application".

Time limit for making application: extension of time

3. (1) An originating application must be received at the appropriate office within .... calendar months of [*the event giving rise to the claim*].

(2) If the originating application is sent by registered post or recorded delivery, it shall be treated as if it had been received at the appropriate office on the date on which it is received for despatch by the Post Office.

(3) Notwithstanding paragraph (1) above, where the applicant considers it likely that, by reason of exceptional circumstances, an originating application will be received at the appropriate office after the end of the period referred to in paragraph (1), he may include with his originating application a statement of the reasons on which he relies for justifying the delay, and the Tribunal shall treat any such statement of reasons as a request for extending the time limit.

Documents and other material to accompany originating application

4. (1) The applicant shall send or deliver to the Registrar with his originating application a copy of every [map, plan, certificate, report or other document] on which he intends to rely for the purposes of the application together with a sufficient number of additional copies of each of them to enable the Registrar to provide a copy to each of the other parties to the proceedings:

Provided that the Tribunal may, on such terms as it thinks fit, excuse an applicant from providing any [map, plan, certificate, report or other document] required to be furnished under this rule where the [map, plan, certificate, report or document] or a copy is already in the possession of the Tribunal or some other party so that to require it to be provided at this stage would be unreasonable on the grounds of expense or otherwise.

(2) If any [map, plan, certificate, report or other document] on which the applicant relies contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence, or considerations of national security are involved, and on that account the applicant seeks to restrict its disclosure, he shall inform the Registrar of that fact and of his reasons for seeking such a restriction. In any such case, the Registrar shall serve the copies as provided in this rule only in accordance with the directions of the Tribunal.

Fee for originating application

5. The applicant shall send to the Registrar with his originating application such fee as may be determined by the Lord Chancellor from time to time with the consent of the Treasury. The fee shall be set out in any form approved for the purpose of making an application.

Amendment of originating application and delivery of supplementary statement

6. (1) The applicant may, at any time before he is notified of the date of the hearing of the application, amend his originating application or deliver a supplementary statement in relation to his application.

(2) The applicant may amend any originating application or supplementary statement with the leave of the Tribunal at any time after he has been notified of the date of the hearing of the application or at the hearing itself. The Tribunal may grant such leave on such terms as it thinks fit, including the payment of costs or expenses.

(3) The applicant shall send a copy of every amendment and supplementary statement to the Registrar.

Application for directions

7. The applicant may apply to the Tribunal to give directions as to any matter relating to the hearing of his application. An application for directions shall be made in writing to the Registrar at the appropriate office with sufficient copies to enable the Registrar to serve a copy on each of the other parties.

Withdrawal of application

8. The applicant may:–

(a) at any time before the hearing of the application withdraw his application by sending to the appropriate office a notice stating he withdraws his application signed by him or his representative;

(b) at the hearing of the application, with the leave of the Tribunal, withdraw his application.

Action of applicant on receipt of notice of hearing

9. (1) The Registrar will serve on the applicant a notice informing him of the time and place of any oral hearing which is to be held which, unless the parties otherwise agree, shall not be earlier than twenty one days after the date on which the notice is sent. Such notice will include, in a form approved by the President of the Tribunal, guidance regarding the rules of evidence and procedure which apply to the hearing.

(2) When he receives the notice of the time and place of hearing, the applicant shall inform the Tribunal whether or not he intends to attend or be represented at the hearing and whether or not he intends to call witnesses.

(3) If the applicant does not intend to attend or be represented at the hearing, he may send to the Registrar additional written representations in support of his application.

Representation at hearing

10. At the hearing of an application the applicant may conduct his case himself (with assistance from any person if he wishes) or may appear and be represented by any person whether or not legally qualified:

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent the applicant at the hearing.

(B) THE REPLY BY THE RESPONDENT

Action by respondent on receipt of originating application

11. (1) A person who receives a copy of an originating application making a claim against himself (who is referred to in these Rules as "the respondent") shall deliver to the Registrar a written reply acknowledging receipt of such originating application and setting out:–

(a) his full name and address;

(b) a statement whether or not he intends to resist the originating application and the grounds on which he relies in resisting it;

(c) the name and address [and the profession] of any representative of the respondent and whether the Tribunal should send notices concerning the originating application to the representative instead of to the respondent.

(2) The respondent may include in his reply a request for further particular of the originating application.

(3) Every such reply shall be signed by the respondent or his representative and shall be delivered at the appropriate office not later than twenty one days after the date on which the notification of the originating application was sent to him by the Registrar.

(4) A reply which is received by the Registrar after the time appointed by this rule which contains reasons on which the respondent relies for justifying the delay shall be deemed to include an application for an extension of the time so appointed.

(5) A respondent who has not delivered a written reply shall not be entitled to take any part in the proceedings before the Tribunal on the originating application except:–

(a) to apply for an extension of time for presenting a reply;

(b) to apply for a direction that the applicant provide further particulars of his claim;

(c) to apply under rule 29 for a review of the Tribunal's decision on the grounds that he did not receive notice of the originating application;

(d) to be called as a witness by another person;

(e) to be sent a copy of a decision or corrected decision.

Documents and other material to accompany reply

12. (1) The respondent shall send or deliver to the Registrar with his reply a copy of every [map, plan, certificate, report or other document] on which he intends to rely at the hearing of the application, together with a sufficient number of additional copies of each of them to enable the Registrar to provide a copy to each of the other parties to the proceedings:

Provided that the Tribunal may, on such terms as it thinks fit, excuse a respondent from providing any [map, plan, certificate, report or other document] required to be furnished under this rule when the [map, plan, certificate, report or document] or a copy is already in the possession of the Tribunal or some other party so that to require it to be provided at this stage would be unreasonable on the grounds of expense or otherwise.

(2) If any [map, plan, certificate, report or other document] contains any matter that relates to intimate personal or financial circumstances, is commercially sensitive, consists of information communicated or obtained in confidence, or considerations of national security are involved, and for that reason the respondent seeks to restrict its disclosure, he shall inform the Registrar of that fact and of his reasons for seeking such a restriction. In any such case, the Registrar shall serve the copies as provided in this rule only in accordance with the directions of the Tribunal.

Amendment of reply and delivery of supplementary statement

13. (1) The respondent may, at any time before he is notified of the date of the hearing of the application, amend his reply or deliver a supplementary statement by way of reply.

(2) The respondent may amend any reply or supplementary statement with the leave of the Tribunal at any time after he has been notified of

the hearing of the application or at the hearing itself. The Tribunal may grant such leave on such terms as it thinks fit, including the payment of costs or expenses.

(3) The respondent shall send a copy of every amendment and supplementary statement to the Registrar.

Application for directions

14. The respondent may apply to the Tribunal to give directions as to any matter relating to the hearing of the originating application. An application for directions shall be made in writing to the Registrar at the appropriate office with sufficient copies to enable the Registrar to serve a copy on each of the other parties.

Failure to reply and absence of opposition

15. If no reply is received by the Registrar within the time appointed by rule 11 or any extension of time allowed by the Tribunal, or if the respondent states in writing that he does not resist the application, or withdraws his opposition to the application, and in any such case there is no other opposition to the application, the Tribunal may determine the application on the basis of the originating application without a hearing.

Action of respondent on receipt of notice of hearing

16. (1) The Registrar will serve on a respondent who opposes the application a notice informing him of the time and place of any oral hearing which is to be held which, unless the parties otherwise agree, shall not be earlier than twenty one days after the date on which the notice is sent. Such notice will include, in a form approved by the President of the Tribunal, guidance regarding the rules of evidence and procedure which apply to the hearing.

(2) When he receives the notice of the time and place of hearing, the respondent shall inform the Tribunal whether or not he intends to attend or be represented at the hearing, and whether he intends to call witnesses.

(3) If the respondent does not intend or be represented at the hearing, he may send to the Registrar additional written representations in support of his reply.

Representation at hearing

17. At the hearing of an originating application, the respondent, if an individual, may conduct his case himself (with assistance from any person if

he wishes) and any respondent may appear and be represented by any person whether or not legally qualified:

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent a respondent at the hearing.

PART II: ADDITIONAL PARTIES

Notification to third parties

18. Upon receiving an originating application, a reply or any supplementary statement in which any person other than the applicant or respondent is named as having a direct interest in the proceedings, the Registrar shall immediately send to such person copies of the originating application, reply and supplementary statement together with such information as is appropriate to the case about the method of such other person applying to be made a party to the proceedings as a respondent and delivering a reply and the availability of advice in relation to the application from the offices of the Tribunal and the Citizens Advice Bureau.

Addition of new parties to the Proceedings

19. If it appears to the Tribunal, whether on the application of a party or otherwise, that it is desirable that any person be made a party to the proceedings, the Tribunal may order such person to be joined as a respondent and may give such directions relating thereto as may be just, including directions as to the delivery and service of documents.

PART VI: MISCELLANEOUS AND INTERPRETATION

Interpretation

44. .....

"applicant" means a person who makes an application to the Tribunal under section ... of the Act, and includes a legal personal representative of a person entitled to make such an application;

.....

"party" includes the applicant and any person named or joined to the proceedings as a respondent;

"reply" means a reply by a respondent;

.....

ANNEX C

RESPONSES TO MODEL RULES CONSULTATION DRAFT

The Solicitor, Department of Health and Department of Social Security

The President, Employment Appeal Tribunal

The Office of Special Commissioners of Income Tax

The Chief Commissioner, Social Security Commissioners

The Forms Unit, Lord Chancellor's Department

The Solicitor, Inland Revenue

The Department of Employment

The Ministry of Agriculture, Fisheries and Food

The Civil Aviation Authority

The Law Society's Employment Law Committee

The Law Society's Mental Health Sub-Committee

The Data Protection Registrar

The Chief Planning Inspector

The Department of Social Security

The President of Social Security Appeal Tribunals

The Scottish Education Department

The Scottish Consumer Council

The Lands Tribunal for Scotland

The Crofters Commission

The Lord Chancellor's Department, Tribunals Policy Branch

Printed in the United Kingdom for HMSO
Dd 0506234 3/91 C15 3382 4235 137709 Job No. 910515

HMSO publications are available from:

HMSO Publications Centre
(Mail and telephone orders only)
PO Box 276, London SW8 5DT
Telephone orders 071-873 9090
General enquiries 071-873 0011
(queuing system in operation for both numbers)

HMSO Bookshops
49 High Holborn, London, WC1V 6HB 071-873 0011 (Counter service only)
258 Broad Street, Birmingham, B1 2HE 021-643 3740
Southey House, 33 Wine Street, Bristol, BS1 2BQ (0272) 264306
9–21 Princess Street, Manchester, M60 8AS 061-834 7201
80 Chichester Street, Belfast, BT1 4JY (0232) 238451
71 Lothian Road, Edinburgh, EH3 9AZ 031-228 4181

HMSO's Accredited Agents
(see Yellow Pages)

and through good booksellers